

Supreme Court of the United States

OCTOBER TERM, 1971

No. 71-711

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

v.

GRANITE STATE JOINT BOARD, TEXTILE WORKERS UNION
OF AMERICA, LOCAL 1029, AFL-CIO,
Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE FIRST CIRCUIT

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[The Board's decision and order and the opinion and judgment of the court of appeals are not reprinted in this appendix since they are already printed as an appendix to the petition]

**UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT**

**CHRONOLOGICAL LIST OF
RELEVANT DOCKET ENTRIES**

12. 9.66 Charges filed in 1-CB-1460-1 and 1-CB-1460-2
1.29.69 Complaint & notice of hearing, dated
2.12.69 Amendment to complaint, dated
2.17.69 Respondent's answer to complaint & amendment to
complaint, received
3.25.69 Hearing opened
3.25.69 Hearing closed
6. 4.69 Trial Examiner's Decision, issued
6.24.69 Charges filed in 1-CB-1504 (1-4)
6.27.69 General Counsel's exceptions, received
7. 3.69 General Counsel's motion to reopen the record in
1-CB-1460(1-2) dated
7.18.69 Respondent's answer to General Counsel's motion,
received
9.12.69 Charge filed in 1-CB-1534
10.20.69 Order consolidating cases, complaint & notice of
hearing, dated
10.22.69 Board's Order granting motion to reopen the rec-
ord & remanding proceeding to Regional Director
for further hearing, dated
10.24.69 General Counsel's motion to consolidate cases 1-CB-
1460 (1-2) with Cases 1-CB-1504 (1-4) and 1-CB-
1534, dated
10.28.69 Respondent's answer in cases 1-CB-1504(1-4) &
1-CB-1534, received

- 10.30.69 Trial Examiner's teletype to parties to show cause why motion to consolidate should not be granted, dated
- 11.10.69 Trial Examiner's teletype granting General Counsel's motion to consolidate, dated
- 11.14.69 Order consolidating cases & notice of hearing, dated
- 11.20.69 Hearing re-opened
- 11.20.69 Hearing closed
- 4. 8.70 Trial Examiner's Supplemental Decision, issued
- 5.25.70 Respondent's exceptions to Trial Examiner's Supplemental Decision, received
- 12.31.70 Decision and Order issued by the National Labor Relations Board, dated
- 8. 4.71 Board's Application for enforcement filed
- 6.29.71 Decision of the First Circuit Court of Appeals, filed
- 6.29.71 Judgment of the First Circuit, entered
- 3.20.72 Order of the Supreme Court granting certiorari, dated

**BEFORE THE NATIONAL LABOR RELATIONS
BOARD**

First Region

Case Numbers

1-CB-1460-1

1-CB-1460-2

IN THE MATTER OF:

**GRANITE STATE JOINT BOARD, TEXTILE WORKERS UNION
OF AMERICA, LOCAL 1029, AFL-CIO (International
Paper Box Machine Company)**

and

FELIX RADIEWICZ, AN INDIVIDUAL

MAURICE K. KIMBALL, II, AN INDIVIDUAL

Ward Room 5

City Hall

Nashua, New Hampshire

March 25, 1969

The above-entitled matter came on for hearing, pursuant to notice, at 10:00 o'clock a.m.

BEFORE:

MILTON JANUS Trial Examiner

APPEARANCES:

THOMAS P. KENNEDY, ESQ. National Labor Relations Board, John F. Kennedy Federal Building, Boston Massachusetts, appearing on behalf of the General Counsel.

HAROLD B. ROITMAN, ESQ. 6 Beacon Street, Boston, Massachusetts, appearing on behalf of the Respondent, Granite State Joint Board, Textile Workers Union of America, Local 1029, AFL-CIO.

[20] MAURICE KIMBALL, II

was called as a witness by and on behalf of the General Counsel and, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

[21] Q (By Mr. Kennedy) Will you give us your name.

A Maurice Kimball, II.

MR. KENNEDY: Speak up, please.

Q (By Mr. Kennedy) Your address?

A Turkey Hill Road, Merimack.

MR. ROITMAN: Sorry, I didn't get that.

THE WITNESS: Turkey Hill Road, Merimack.

MR. ROITMAN: Turkey Hill.

Q (By Mr. Kennedy) Now, Mr. Kimball, were you formerly employed or have you worked for International Paper Box?

A Yes.

Q When did you first start working for this organization?

A In May of '67.

Q And what was your job?

A Tool setter.

Q And now, Mr. Kimball, was the Granite State Joint Board of the Textile Workers Union—did that represent the employees at International when you first became an employee of International?

A Yes.

MR. ROITMAN: Well, of course, that is a conclusion that I am not sure this witness is qualified to answer.

TRIAL EXAMINER: Well, he may know something about the contract between the parties.

Q (By Mr. Kennedy) When you first became employed,

. . . .

[22] Q Now, Mr. Kimball, did you join the Textile Workers Union subsequently to becoming employed? Did you eventually join the Textile Workers Union?

A Yes.

Q When did you join it?

A Between '68—'67, '68—one of them.

Q Winter between '67 and '68?

A Yes.

[23] TRIAL EXAMINER: All right. I will receive General Counsel's Exhibit 3.

(The document above-referred to was marked General Counsel's Exhibit No. 3 for identification and was received in evidence.)

MR. ROITMAN: I will agree that this is a contract from September 20, 1965, to September 20, 1968.

Q (By Mr. Kennedy) Can you tell us how you went about and joined the Union?

A I went and asked the shop steward.

Q Now, was there a strike called against International Paper Box in September, 1968, Mr. Kimball?

A Yes, there was.

Q Did you attend the strike vote meeting in September, [24] 1968?

A Yes.

Q And how was the voting conducted?

A It was a stand-up vote.

Q And how did you vote, Mr. Kimball?

A I voted for the strike.

Q (By Mr. Kennedy) And did you voluntarily go on strike on September 20, 1968?

A Yes.

Q Now, did you then go to work at some other place of business?

A Yes.

Q Now, did you subsequently decide to go back to work for International Paper Box?

A Yes.

Q Can you tell us when you decided to do so?

A It was in November.

Q In 1968?

A '68.

Q Now, Mr. Kimball, did you send a letter to the Union in November of 1968 concerning your membership?

A Yes.

.

[25] Q (By Mr. Kennedy) Now, showing what has been marked as General Counsel's Exhibit No. 4, can you look at this and tell us if this is a copy of the original letter that you sent to the Union on November 25, 1968?

A Yes.

.

[26] (By Mr. Kennedy) Now, Mr. Kimball, did you subsequently receive a reply to this letter of withdrawal?

A Yes.

.

Q (By Mr. Kennedy) Now, Mr. Kimball, showing what has been marked for identification as General Counsel's Exhibit No. 5, which purports to be a letter addressed to Maurice [27] Kimball of Nashua, New Hampshire, and signed Thomas J. Pitarys, Manager of the Granite State Joint Board. Is that the original of the letter you received from Mr. Pitarys on the date indicated on the letter itself?

A Yes.

.

[28] TRIAL EXAMINER: What did you do after you got this letter with respect to going back to work?

THE WITNESS: I didn't go back.

.

[32] Q (By Mr. Kennedy) How many hours did you work per week?

A Forty-five.

Q And what was your average take-home earnings during the time you worked for International?

A Average—about \$80.

MR. KENNEDY: I have no further questions of this witness. You may examine, Mr. Roitman.

TRIAL EXAMINER: You want a short recess, Mr. Roitman?

MR. ROITMAN: All right. Perhaps that would shorten the cross-examination.

(Discussion off the record.)

TRIAL EXAMINER: On the record.

MR. ROITMAN: I have, in the off-the-record period, requested the statement given by Maurice Kimball to the Board, and Mr. Kennedy, the Counsel for the General Counsel, has furnished me with a two-page document at this time.

TRIAL EXAMINER: All right, off the record.

(Discussion off the record.)

TRIAL EXAMINER: On the record.

CROSS-EXAMINATION

Q (By Mr. Roitman) Mr. Kimball, you recall being at the Union meeting at which the strike vote was taken.

A Yes.

[33] Q And I think you testified that you personally voted in favor of the strike.

A Yes.

Q Now, do you recall that at that time there was a motion made with respect to the possibility of members being fined if they took action detrimental to the Union?

* * *

Q Can you tell me what you recall about it?

A What I recall about it?

Q Yes.

A They had a motion about a fine put forth.

Q And did you speak on this motion?

A No.

Q But you voted on it.

A It was voted on by a stand-up vote.

Q And you participated in that vote as a member.

A Not on that vote.

[34] Q You recall that there was a vote of the Local with respect to fining members who took action detrimental to the Union.

A Yes.

Q Now, after the strike began, I think you stated that you went to work for another company?

A Yes.

Q What company did you go to work for?

A Sheet metal company.

Q Is that the name of the company?

A Ray Miller Sheet Metal.

Q Are you still with that company?

A Yes.

Q And you have been working continuously for that company ever since September of 1968.

A Yes.

Q Can you tell us what your job title is with that company?

A Put in heating systems.

Q And what is your hourly rate of pay? Are you paid by the hour?

A Yes.

Q What is your hourly rate of pay?

A 2.40 at the present time.

Q By way of reference I think you testified that your rate with International Paper Box was \$2.15, was it not?

[35] A No.

Q What did you say your rate was when you were at International Paper Box?

A 2.17.

.

[36] Q Now, from September 20 through November 25, there were Union meetings held from time to time, were there not?

A Yes.

Q And at those meetings did they discuss the conduct of the negotiations with the Company?

A You mean September 20 and—

Q Yes, and November 25.

A Yes.

Q And you attended those meetings?

A Those meetings, yes.

Q All right. I am not sure I have the exact date, but on some date after you received the letter from Mr. Pi-

tarys, you called the superintendent at the Company, Mr. McQuestion, is that his name?

A Repeat that again.

Q After you received the letter from Mr. Pitarys of the Union, as I understand it, you called your supervisor at the Company?

A Yes.

Q And his name was Mr. McQuestion?

* * *

[41] Q Now, at the time that you joined the Union, do you recall that you signed a membership application card?

A Yes.

Q And you also signed at that time a check-off authorization card which was the same attached card?

A Signed another—

Q Did you also sign a card authorizing the Company to deduct dues from your weekly pay?

A Yes.

Q And at the time that you signed them, you were advised with respect to the Union's Constitution and By-Laws and its purposes.

A Who advised me?

Q Well, when you spoke to whoever you signed the card with.

A He just gave me the card.

Q You asked for the card, and you were—

[42] A I asked for the card; he gave it to me, and I signed it.

Q And thereafter you were sworn into the Union as a member, and you attended Union—

A Sworn in, no.

Q Thereafter, after you signed the card, you attended Union meetings as a member of the Union?

A Yes, I attended Union meetings.

Q And you participated in Union functions of both in the shop and at the meeting hall.

A Union functions?

Q Well, you discussed grievances with your shop steward?

A No, I didn't.

Q And Union matters other Union members, did you not?

A No, I didn't.

Q But you attended the Union meetings?

A Yes.

. . . .

[43] Q (By Mr. Roitman) Do you recall the card that you signed for membership had a provision in it that said that you could resign or withdraw within ten days from the termination of the contract?

A Ten days from the contract?

Q Yes.

A I didn't know at the time.

Q Well, do you recall the statement that you made to the Board at—

A Yes, I do. But when I sent my resignation in I didn't know what the card said, that after I seen the card, I went to the Union hall. I seen the card. I read it then.

Q And you agree that you told the Board that the card said that you could resign from the Union ten days before the contract ends.

A Yes.

. . . .

[54] FURTHER EXAMINATION

Q (By the Trial Examiner) Directing your attention to the Union meeting at which the strike vote was taken—

A Yes.

Q —do you recall what the motion was on which you voted with respect to the strike?

A What it was?

Q Yes.

A Not offhand.

Q Were there any other separate motions made at that time?

A There were other motions made, but I can't remember how they all went.

Q Do you recall a motion being made with respect to the obligations of the strikers about going back to work?

A The strikers going back to work?

Q Yes. Was anything discussed or was there a motion about what would happen to strikers who returned to work?

A Yes.

Q What was that?

A That they'd be fined.

Q Was that a different motion than the strike vote [55] itself?

A I can't remember at this time.

* * *

Q (By Mr. Kennedy) Well, Mr. Kimball, do you recall voting for the strike?

A Yes.

Q Do you recall voting for a fine?

A (No response.)

Q Do you remember voting for a fine?

A No.

MR. KENNEDY: You don't. All right.

RECROSS-EXAMINATION

Q (By Mr. Roitman) You remember that a vote was taken though.

A Yes.

Q And you remember that it passed?

A Yes.

Q As a matter of fact, it passed without any opposition at all.

MR. KENNEDY: What vote is this now?

MR. ROITMAN: Vote with respect to the fine.

THE WITNESS: Yes.

Q (By Mr. Roitman) And you personally made no attempt to oppose that motion for a fine.

A No.

[56] TRIAL EXAMINER: Was the amount of the fine stated in the motion?

THE WITNESS: Yes.

TRIAL EXAMINER: Do you recall what it was?

THE WITNESS: Two thousand dollars.

* * *

[57] Q When you started work, you were given a copy of what is now General Counsel's No. 8, an agreement between the Company and the Union.

A Right.

Q And that was sometime in the summer of '67—May, I guess?

A May.

Q I forget the exact testimony.

And then some six or seven months later after that, you went to Charles Fields, your shop steward, and told him you wanted to become a member of the Union.

A Right.

.

[58] Q (By Mr. Roitman) All right. Well, I show you General Counsel's 6, and when you signed that, wasn't there, in fact, another section underneath which you also signed?

A There could have been, yes. I am not sure.

.

[59] Q (By Mr. Roitman) The next question was after you signed that card and in the subsequent months your Union dues were deducted from your pay by the Company, and the Company notified you that they were deducting the dues.

A They started the deducting the dues as far as I remember.

Q And when they gave you your pay envelope, or pay jacket, they noted on it there was a deduction for Union dues.

A Right.

Q And that continued every month that you continued [60] in the employ of the company.

A Right.

Q And received pay checks through September of 1967.

A Yes.

Q '68—excuse me.

A Yes.

Q Through September, 1968.

A Yes.

Q And at no time did you ever notify the Company prior to the call of the strike that you wanted them to discontinue any deductions of your dues.

THE WITNESS: No.

[61] MR. ROITMAN: Well, I am willing to stipulate in behalf of the Union that prior to the expiration of the collective bargaining agreement, which is General Counsel's 3, I believe, the parties entered into negotiations for a new contract containing change in terms and conditions but that they were never able to arrive at a satisfactory agreement and that on September 20, after this contract expired, the Union started a strike for new and improved contract terms and conditions and that this strike is still in progress.

TRIAL EXAMINER: All right.

MR. KENNEDY: I will so stipulate.

[63] Q (By Mr. Roitman) Mr. Kimball, I believe you testified originally that you received various communications from the Union with respect to Union meetings and other matters after the beginning of the strike.

A Yes.

Q And among other things do you recall receiving a communication from the Union with respect to the continuation of your insurance coverage?

A Yes.

[65] Q (By Mr. Roitman) But you did receive this letter and thereafter you never advised them with respect to discontinuing your insurance?

A I never told them to keep it.

MR. ROITMAN: May I introduce this as Respondent's Exhibit 1.

[67] TRIAL EXAMINER: Thank you.

The letter dated December 12, 1968, which has been marked as Respondent's Exhibit 1, advises you that you

can continue the insurance coverage and by arranging for payment of such coverage. What was your testimony with respect to that?

THE WITNESS: I never went and—I never wanted any insurance from them.

TRIAL EXAMINER: While you were employed by the Company, was the insurance coverage premium deducted from your pay?

THE WITNESS: No.

[68] TRIAL EXAMINER: Do you know how it was paid?

THE WITNESS: The Company paid it.

TRIAL EXAMINER: The Company paid it all?

THE WITNESS: (Nodding head.)

TRIAL EXAMINER: There was no deduction from your pay for it?

THE WITNESS: As far as I know, there wasn't.

MR. ROITMAN: I think you will find it set forth in the contract.

FURTHER REDIRECT EXAMINATION

Q (By Mr. Kennedy) You made no payments of your own toward that insurance, correct?

A No.

Q At any time.

A No.

MR. KENNEDY: All right. I have no further questions.

(Witness excused.)

MR. KENNEDY: General Counsel calls Mr. Felix Radziewicz, please.

Whereupon,

FELIX ALFRED RADIEWICZ

was called as a witness by and on behalf of the General Counsel and, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

[69] Q Now, when did you first start working at International Paper Box, Mr. Radziewicz?

A April, 1960.

Q And what was your job there?

A I started as a painter in the paint shop.

Q And then where did you go from there?

A Assembly department.

Q And did you do any other work in the plant?

A No.

Q Now, did you become a member-after you joined the Company, did you become a member of Local 1029 of the Textile Workers Union?

A Yes.

Q When did you join that Union?

A Probably about thirty days after.

Q Thirty days after you came to work?

A They gave you thirty days to decide, I guess it was.

Q How did it come about that you joined?

A The steward come over and ask you to join a Union if you want.

[70] Q And did you join at that time?

A Well, I waited, and then after I joined.

Q How long after you worked?

A Well, I took thirty days.

Q To think about it?

A (Nodding head.)

Q And then you decided to join?

A (Nodding head.)

Q Now, up until the date of the strike, which began on September 20, 1968, did you continue to be a dues-paying member of the Union?

A Yes.

Q Now, when you went on strike, did you go to work somewhere else?

A Yes.

[71] Q (By Mr. Kennedy) All right. During the month of November of in late October, did you take any steps with respect to going back to International?

A Well, I was thinking about it in November.

Q What did you do?

A Well, I quit Beebe Rubber Company because I had been making more at International. So, I went back.

Q Now, do you remember approximately when this was that you quit Beebe Rubber?

A Just before Thanksgiving, I guess it was.

Q Now, during the month of November, did you send a letter to the Union concerning your membership?

A Yes.

.

[72] Q (By Mr. Kennedy) Now, Mr. Radzewicz, showing you what has been marked for identification as General Counsel Exhibit No. 7, is this a true copy of the letter which you sent to the Union?

A Yes.

Q And would you look at the rest of these documents and see if that's the outside envelope of that letter.

A Yes.

Q And the other documents—would you look through them and make sure those are the postal receipts, the originals.

A Yes.

.

[73] Q (By Mr. Kennedy) Now, did you subsequently receive a reply to your letter?

A Yes.

.

Q (By Mr. Kennedy) Showing what has been marked for identification as General Counsel's Exhibit No. 8, would you look at this and tell me if this is a copy of the Union's reply to your letter.

A Yes.

.

[74] Q (By Mr. Kennedy) After November 8—you received a letter on November 8?

A Yes.

Q Did you go back to work after that?

A Yes.

Q When did you go back to work? Do you remember what day you went back to work?

A At International?

Q Yes.

A Twenty-fifth.

Q November 25?

A Yes.

Q How many days did you work there?

A Three days.

Q And the plant was still on strike at that time.

A Yes.

* * *

[81] Q (By Mr. Kennedy) Now, after your conversation with Pitarys on the evening of November 27, did you go back to work after that?

A No, not at the International.

Q What did you do after that?

A Looked for another job. Went down to Sandera.

* * *

[82]

CROSS-EXAMINATION

[89] Q (By Mr. Roitman) All right. Now, after you joined the Union back in 1960, you attended Union meetings from time to time?

* * *

[90] A Off and on.

Q And you participated in Union affairs as you desired to participate.

A Yes.

Q At any time did you request a copy of the Union Constitution and By-Laws?

A Well, they gave me one.

* * *

[91] Q And you attended the meeting that was held on Sunday before the strike started?

A Yes.

Q You were present at the time that the vote was taken to go on strike?

A Yes.

Q And you voted in favor of it.

A Well, they all stood up. I might as well stand up, too.

Q You stood up in favor of it?

A That is right.

.

[98] Q And do you recall anything with respect to the continuation of your insurance at the Company?

A They said that they'd take care of it.

Q When you say, "They said they'd take care of it," who said that to you?

A Tom.

Q Tom Pitarys?

A Yes.

Q And was that at a meeting?

A Yes.

Q Do you recall when that meeting was?

A No, I don't recall when it was.

Q And at any time did you advise the Union that you did not want your insurance taken care of?

A No, I didn't advise them.

.

[111] THOMAS J. PITARYS

was called as a witness by and on behalf of the Respondent and, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

.

Q And what is your occupation?

A I'm the manager of the Granite State Joint Board, Textile Workers Union.

.

[113] Q All right. Now, can you tell us when the meeting was in which the Local Union voted to go on strike?

A The meeting, to the best of my recollection, was September 21. The meeting that was the official strike meeting was the Saturday prior to the 20th. As to the date, I will have to refer to the calendar.

.

Q And what took place at that meeting?

A At that meeting the discussion was on the report as to the negotiation between the Company and the Union Committee; and then, of course, the question was brought up what was the membership going to do on midnight, September 20. And at that time the strike vote was taken.

Q All right. Can you tell us what the vote was with respect to going on strike?

A The strike vote to the best of my recollection was, with the exception of one dissenting vote, it was overwhelming majority.

Q And after the strike vote was taken, were there any other resolutions, motions passed by the meeting?

A That was on the following Saturday, which was September 21.

Q And will you tell us what action was taken or what motion [114] was made at that time.

A Well, at that meeting the question of unity and solidarity was discussed among the members; and one of the members made a motion that anyone that was aiding and abetting the Company or any of its officials would be subject to a \$2,000 fine or any such amount that the Local Union would decide on.

Q All right. And was there discussion of that motion that you recall?

A No, I can't recall any discussions.

Q Do you recall what the vote was with respect to that?

A The vote was unanimous.

Q Now, at that time—incidentally, are you familiar with the witness Radziewicz?

.

[115] Q At the meeting at which the strike vote was taken, did you observe him to be present?

A Oh, yes, I did.

Q And at the meeting at which the resolution with respect to this \$2,000 that you have just referred to, did you observe Mr. Radziewicz?

A He was present.

Q Now, at sometime during the course of the strike did you receive a letter from Mr. Radziewicz, which has been introduced as General Counsel's Exhibit 7?

A Yes, we did.

* * *

[116] Q And after receiving that, did you mail him a letter?

A Yes, I did.

Q And that's been put in evidence as General Counsel's Exhibit 8. That was the letter dated November 8.

A That's right.

Q And did you incidentally, the same letter with respect to Mr. Kimball was sent?

A The same letter, but I omitted the P.S. part of it.

* * *

[128] Q Now, after the strike started, did the Union take steps to continue the insurance coverage of the employees?

A On that first meeting of the strike, as a result of the Company telling us that they were going to drop the insurance coverage, I took it upon myself without clearance from higher officials that rather than drop the insurance and leave the members without any coverage and without any protection whatsoever, I felt that we should carry that insurance; and we so reported it. I reported it to the general membership meeting that rather than dropping the insurance, the Union [124] would pay the premium. And the Union did reimburse the Company for the premiums.

Q Now, this was the group life and health insurance carried?

A Yes.

Q Under the collective bargaining agreement?

A Yes, sir.

Q Which has already been introduced in evidence?

A Yes.

Q Under the prior collective bargaining agreement, the hospitalization benefits and life insurance benefits were paid for by the Company.

A Yes.

Q And that was one of the questions of—those benefits was one of the issues in the strike, and the Company immediately informed the Union that if there was a strike they could discontinue all group insurance, is that right?

A Yes.

Q And at this point you stated you took it on yourself and arrangements were made with the insurance company for the premiums to be paid through the Union.

A No. The first three months we were reimbursing the Company. We would send the check to the Company paying the total cost of the insurance for our members. But, then, as of December, the Company had told us, or rather, I'm sorry, this [125] was our first meeting after Christmas. And the Company had said that they don't like the arrangements any more and that as far as they were concerned the insurance was going to be dropped completely.

Q But with respect to the period from September through December, the Union paid the premium.

A Yes.

Q In this case, as you pointed out, they paid it through the Company by the members by a check.

A Yes.

Q And during this period of time, among others, was Felix Radziewicz covered and Maurice Kimball covered?

A Yes, they were.

Q And did you ever receive any notification from either of these two that they wanted their insurance coverage which would be carried through the Union canceled?

A No, sir.

[135] TRIAL EXAMINER: All right. I'd like to go into something now, if I may, if it doesn't upset your cross-examination. I have looked briefly at the last expired contract, General Counsel's Exhibit 3. It's my impression that there was no Union security clause in the contract, is that true?

[136] THE WITNESS: Just maintenance and membership.

[163] REDIRECT EXAMINATION

Q (By Mr. Roitman) Mr. Pitarys, I show you a document entitled "Constitution of Textile Workers Union of America." Is that the governing document for the Union?

A Yes, it is.

Q And that one is dated June, 1966. That was the operative Constitution with the amendments up to that date, which was in effect in 1968 when the strike went on?

A Yes.

MR. ROITMAN: May I offer that as Respondent's 4. Incidentally, in accordance with the Constitution, are there specific provisions under which discipline can be meted [164] out to an individual?

THE WITNESS: Yes.

(The document above-referred to was marked Respondent's Exhibit No. 4 for identification.)

Q (By Mr. Roitman) Discipline and trials as set forth in Article 13 beginning on page 24 of the Constitution?

A Yes.

Q And I believe there are further references to the appeal procedure and to membership rights in other sections of the Constitution.

A That's right.

Q In addition to the Constitution of the Textile Workers Union of America, is there a Constitution and By-Laws of the Granite State Joint Board?

A There is.

Q And I show you a copy. Is that a copy?

A That's it.

Q Does that, as a matter of fact, word for word repeat the disciplinary provisions of the International Constitution?

A Yes.

.

[165] MR. ROITMAN: Excuse me. May I specifically offer the Union Constitution as Respondent's Exhibit 4

and the By-Laws of the Granite State Joint Board as Union's Exhibit 5.

(The document above-referred to was marked Respondent's Exhibit No. 5 for identification.)

TRIAL EXAMINER: All right, Mr. Kennedy?

MR. KENNEDY: They are being introduced for what purpose?

MR. ROITMAN: To show the Constitution and By-Laws of the Union organization under which they operate.

TRIAL EXAMINER: Well, I suppose you've made some specific reference to the provisions on punishment and discipline.

MR. ROITMAN: Yes. Incorporated within the By-Laws are the basic provisions under which the Union can impose discipline with respect to its membership.

MR. KENNEDY: Well, that is the specific purpose, I have no objection to admitting them for that specific purpose.

[166] TRIAL EXAMINER: Respondent's Exhibits 4 and 5 are received.

* * *

TRIAL EXAMINER: Well, let me ask you this before we get off of it: Is Local 1029 an entity separate and apart [167] from the Granite State Joint Board?

THE WITNESS: It's an affiliate of the Granite State.

TRIAL EXAMINER: Does it have its own by-laws?

THE WITNESS: It has its own by-laws.

MR. ROITMAN: So that the record may be complete, there are also by-laws of Local Union 1029.

What was your answer?

TRIAL EXAMINER: There was no question.

Q (By Mr. Roitman) Are there by-laws of Local Union 1029?

A Yes.

* * *

[168] Q Now, incidentally, with respect to resignations from membership in the Union, have there been over the course of the years that Local 1029 has been the collective bargaining agent along with the Granite State Joint

Board at the International Paper Box Company resignations from any of the members?

A Yes.

Q And in order for those resignations to be accepted, did they comply with the time period specified in the membership application?

A To the best of my knowledge, yes.

Q Over the course of years, how many resignations do you recall have been received?

A I don't know. I recall three at least.

Q And in each case did the employee who was interested in resigning tender his resignation within the appropriate period?

A Yes.

MR. KENNEDY: Well, let me ask to find out what is the appropriate period.

MR. ROITMAN: The collective bargaining agreements between the Union and the Company for whatever period of years they ran started and terminated in September, is that correct?

THE WITNESS: Most of them, yes.

[169] Q (By Mr. Roitman) And I am referring you to the one that's been introduced in evidence, the most recent agreement. That ran from the 20th of September, '65, to the—

A Twentieth of September of '68.

Q And the prior contract expired on the 20th of September '65?

A It was September 19 or thereabouts.

Q Within a day or two of departure?

A Yes.

Q It was the anniversary date, in other words that came up in September?

A Yes.

Q Some of the contracts were for three-year period. Some were for lesser periods, but the annual date would be—

A September, yes, sir.

Q Is it your testimony that in the resignations that were received and accepted by the Local that the resignations came within the appropriate ten-day period?

A Yes.

Q And the letter that you received from Radzieweicz and Kimball came long after the period had passed.

A Yes, sir.

* * *

[170] RECROSS-EXAMINATION

Q (By Mr. Kennedy) Mr. Pitarys, you testified that you had at least three resignations, right?

A That I recall.

Q Do you know who the names of those people are?

A I don't remember.

Q But they all involved people in International Paper Box?

A Yes, sir.

Q Who were Union members?

A Yes, sir.

Q Who had signed a check-off clause as well?

A Yes, a bona fide Union member.

Q And you knew they all withdrew during the ten-day period. Well, let me ask you this: How do you know that they all withdrew during the proper ten-day period?

A We checked the dates.

* * *

[171] Q In the resignations that you say you were aware of, about when did these resignations take place?

A Within ten days after the contract.

* * *

[174] Q (By Mr. Kennedy) Now, Mr. Pitarys, you testified with [175] to three Union documents—the Textile Workers Constitution, the Granite State, which, I believe, is the same as Local 1029.

A It isn't the same. The Granite State Joint Board is composed of Local Unions within the areas specified.

Q Along which is 1029.

A That is right.

Q So, you have got in evidence Textile Workers Union Constitution for the Country, the Granite State Constitution and By-Laws of Local 1029.

A Yes.

Q Now, showing you these three documents, can you direct my attention to any part of these documents which in any way restricts a man's right to withdraw from membership from the Union?

A Does what?

Q Restricts in any way a man's right to withdraw from membership in the Union, in any way says he cannot do or he has ten days to do it?

A There are no provisions in the documents.

Q Concerning withdrawal from membership?

A That is right.

* * *

[176] FURTHER REDIRECT EXAMINATION

Q (By Mr. Roitman) The question was kind of an argumentative, negative. And, in fact, there are provisions in there, Mr. Pitarys, with respect to an individual who may leave the industry?

A Oh, yes, we have. We have provisions for withdrawal and transfers.

Q And those are spelled out in the Constitution.

A They are.

TRIAL EXAMINER: Well, is there anything specifically said one way or the other about resignation?

THE WITNESS: Not resignation as such, but leaving the industry and transferring from one Local to another.

TRIAL EXAMINER: Getting a withdrawal card.

THE WITNESS: Withdrawal card, yes.

* * *

[177] FURTHER RECROSS-EXAMINATION

Q (By Mr. Kennedy) Well, when you refer to leaving the industry, is that the situation that we are talking about here today involving Mr. Radziewicz and Mr. Kimball?

A I can't answer that because I don't know if they have made up their minds to leave the industry. I can't answer that. They will have to answer it. If they applied

for withdrawal card, we will be more than happy to provide one for them. I don't know what their intentions are.

Q If you don't have that withdrawal card, Mr. Pitarys, what are the consequences?

A Nothing. The withdrawal card merely indicates that an individual, a member of this Union, has a right to request a withdrawal and go into another industry or leave our organization; and then when they do return, it saves them an initiation fee.

Q So, the consequences of not complying with the withdrawal—

A Is just merely to save an initiation fee. That's all.

MR. KENNEDY: I see.

MR. ROITMAN: Well, it might have some consequences with respect to whether or not they want to join another affiliate of the AFL-CIO.

THE WITNESS: Yes, it would. It helps.

* * *

[179]

MORRIS AREL

was called as a witness by and on behalf of the Respondent and, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

* * *

Q In 1968 and in 1969 you have been a member of the Local Union?

A Yes, I have.

Q And are you employed by the International Paper Box Machine Company?

A That's right.

Q How many years?

A Seven years.

Q And what is your current position in the Local?

A Vice-President.

Q And at the time of the September meeting, what was your position?

A Recording Secretary.

Q Now, in accordance with your duties as Recording Secretary were you present at the meetings that have been referred to when the strike vote was taken?

[180] A Yes.

Q And the motion was made with respect to a fine?

A Yes.

Q Did you observe either of the two Charging Parties, Felix Radziewicz or Maurice Kimball, present at those meetings?

A I saw Felix Radziewicz. I didn't see Kimball because I didn't know him up. Until this morning I didn't know who Mr. Kimball was.

.

Q Well, all right, you observed him at the meetings. Will you tell us did Mr. Radziewicz or anybody else speak in opposition to the strike?

A No.

Q Did you observe him vote for it?

A Yes.

Q And with respect to this \$2,000, will you tell us what if anything was said or done with respect to that.

[181] A There was no opposition.

Q Will you tell us, first of all, do you know who made the motion?

A Yes—Robert Wright.

Q You recognize him as one of the workers in the plant?

A Yes.

Q And will you tell us to the best of your recollection what his motion was.

A That anyone who aids or abets the Company officials or the Company will be fined \$2,000 or any amount determined by the Union.

.

Q (By Mr. Roitman) And do you recall what the vote was on that?

A It was unanimous.

.

was called as a witness by and on behalf of the Respondent and, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

.

Q What is your occupation?

A I am the Business Agent of the Textile Workers Union.

Q That is the Granite State Joint Board?

[192] A The Granite State Joint Board.

.

Q Now, as Business Agent of the Local, were you present at the Local Union meeting in September of 1968?

A I was.

Q And did you observe Mr. Radziewicz or Mr. Kimball either [193] or both present at the meetings?

A Felix Radziewicz I recognized; in fact, I think at one meeting I talked to him. Mr. Kimball I did not know. I didn't put the face with the name until today.

Q And do you recall a motion in favor of a strike?

A Yes, I do.

Q And was there any opposition to that motion?

A None whatsoever.

Q Carried unanimously?

A Yes.

Q Were you present when the motion was made with respect to a fine for aiding and abetting the Company?

A Yes, I was.

Q Can you give us to the best of your recollection the wording of the motion?

A The wording of the motion was that there would be a \$2,000 fine for anybody aiding and abetting the Company or any of its officials or any other amount to be set by the Union.

Q Do you recall any discussion or anything with respect to that motion?

A There was very little discussion because it was a unanimous vote.

.

GENERAL COUNSEL'S EXHIBIT No. 8**AGREEMENT**

between

**The International Paper Box
Machine Company**

and

**Textile Workers Union
of America, Local No. 1029
A.F.L.-C.I.O.****ARTICLE II****RECOGNITION AND UNION SECURITY****A. RECOGNITION.**

The EMPLOYER hereby recognizes the UNION as the exclusive representative for the purpose of collective bargaining as to wages, hours and other conditions of employment for all of its employees employed on production and maintenance, including shipping and stock room employees, but excluding executives, supervisory, office clerical, factory clerical, employees in the drafting room, watchmen and demonstrators.

B. MAINTENANCE OF MEMBERSHIP.

All employees who are UNION members on the date of signing hereof or who hereafter join the UNION during the original or any extended term hereof shall remain members of the UNION in good standing as to payment of dues during the original or any extended term hereof. The terms of this provision shall be posted on the bulletin boards on which notices to employees are usually posted after the signing date hereof and after said renewal date.

C. CHECKOFF OF UNION DUES.

The EMPLOYER agrees that it will during the full term of this Agreement and any extension of renewal

thereof, deduct weekly from the wages of each employee who authorizes same in writing, UNION dues, including initiation fee, in such amounts as shall be fixed pursuant to the By-laws of the Local and the Constitution of the UNION. The total amount so deducted during each month shall be remitted to the Union or its designee, not later than the tenth day of succeeding month.

GENERAL COUNSEL'S EXHIBIT No. 5

William Pollock, General President

John Chupka, General Sec'y-Treas.

Thomas J. Pitarys, Joint Board Manager

GRANITE STATE JOINT BOARD

Textile Workers Union of America

Affiliate of the AFL-CIO

**814 Elm Street—Suite 420
Manchester, N.H. 03101
Tel. 603-625-8941**

**21 High Street
Nashua, N. H. 03060
Tel. 603-889-1128**

November 27, 1968

**Mr. Maurice Kimball
32 Woodward Ave
Nashua, N.H. 03060**

Dear Maurice:

We received your letter and must say that we are very much surprised at your attempt to resign as a member of local # 1029.

It is evident that you are not familiar with the provisions and procedure that you are required to adhere to when you chose to become a member of the Union.

Accordingly, you are still considered a member in good standing and must abide by the rules and regulations of the Union.

In the event you have any thought that your action removes you from your obligations as a union member, or that you have the right to cross the picket lines, let me caution you that you will be subject to a fine of \$2,000 as per the unanimous action taken by the local union.

We hope you will not attempt to do anything foolish that may hurt your fellow workers and brothers.

We hope you remain solid with them to protect your rights and resolve the strike in an honorable manner.

Don't let the company supervisors promise you the world because without a union you will be their slave and they will eliminate you after they use you for their purpose.

So, Maurice, think very seriously before you sell your friends and fellow workers down the river.

Sincerely and Fraternally,

/s/ Thomas J. Pitarys
THOMAS J. PITARYS
Manager

TJP/p

GENERAL COUNSEL'S EXHIBIT No. 6

12-26-62

International Paper Box Machine Co. Bench Dept.
I, the undersigned hereby accept membership in Textile
Workers' Union of America, AFL-CIO, and do hereby
authorize and direct.

INTERNATIONAL PAPER BOX MACHINE
COMPANY, NASHUA

which is my employer, to deduct from my wages the membership dues including initiation fees, in the amount fixed pursuant to the Constitution and the By-Laws of my Local Union and to pay over same to the Union or its designated agent pursuant to the provisions of any current or future collective agreement.

This authorization shall remain in effect until revoked by me and shall be irrevocable for a period of one year from the date hereof or until the termination date of any applicable collective agreement, which ever occurs sooner; unless I revoke it by sending written notices to my Employer and the Local Union by registered mail, only during a period of ten days immediately succeeding the termination date of any applicable collective agreement or yearly period, it shall be automatically renewed as an irrevocable check-off from year to year, until duly revoked as herein provided.

Social Security No. 002-32-2639

Witness Charles F. Field

Steward

/s/ Maurice K. Kimball J., II
32 Woodward Ave.
Nashua, N. H.

GENERAL COUNSEL'S EXHIBIT No. 8

William Pollock, General President

John Chupka, General Sec'y Treas.

Thomas J. Pitarys, Joint Board Manager

**GRANITE STATE JOINT BOARD
Textile Workers Union of America**

Affiliate of the AFL-CIO

**814 Elm Street—Suite 420
Manchester, N. H. 03101
Tel. 603-625-8941**

**21 High Street
Nashua, N. H. 03060
Tel. 603-889-1128**

November 8, 1968

**Mr. Felix Radziewicz
233 Lake Street
Nashua, N.H.**

Dear Felix:

We received your letter and must say that we are very much surprised at your attempt to resign as a member of local # 1029.

It is evident that you are not familiar with the provisions and procedure that you are required to adhere to when you chose to become a member of the Union.

Accordingly, you are still considered a member in good standing and must abide by the rules and regulations of the Union.

In the event you have any thought that your action removes you from your obligations as a union member, or that you have the right to cross the picket lines, let me caution you that you will be subject to a fine of \$2,000 as per the unanimous action taken by the local union.

We hope you will not attempt to do anything foolish that may hurt your fellow workers and brothers.

We hope you remain solid with them to protect your rights and resolve the strike in an honorable manner.

Don't let the company supervisors promise you the world because without a union you will be their slave and they will eliminate you after they use you for their purpose.

So, Felix, think very seriously before you sell your friends and fellow workers down the river.

Sincerely, and Fraternally,

/s/ Tommy
THOMAS J. PITARYS
Manager

P.S. Remember, *you* voted for the strike.

RESPONDENT'S EXHIBIT No. 4

TEXTILE WORKERS UNION OF AMERICA,
AFL-CIO, CLC

CONSTITUTION

JUNE, 1966

As adopted May, 1939 and amended through succeeding
conventions including the Fourteenth Biennial
Convention

ARTICLE XI

Membership

Section 8. Any member in good standing may withdraw from membership upon leaving the industries within the jurisdiction of this International Union. A withdrawal card shall be issued to such withdrawing member and he or she shall thereupon lose all rights and privileges of a member and shall be exempt from the payment of dues and assessments. A member who has withdrawn may subsequently be reinstated without the payment of an initiation fee.

RESPONDENT'S EXHIBIT No. 5

CONSTITUTION

and

BY-LAWS

GRANITE STATE JOINT BOARD

Textile Workers Union of America, AFL-CIO

* * * *

ARTICLE IX

Transfers and Withdrawals

Section 1. Any member who is in good standing may transfer his or her membership to another Local of the International in the Joint Board within ninety (90) days from the date of a lay-off or termination from their previous employment. Upon application to the Union Office he shall receive a transfer card, which shall admit him to the Local Union to which he desires to be transferred, provided he is eligible for membership in such Local Union and complies with the transfer provisions of the By-Laws governing the Local Union to which he seeks to be transferred.

Section 2. Any member who is in good standing in his or her Local Union may withdraw from membership within thirty days upon leaving his or her employment and receive a withdrawal card. Thereafter, the withdrawing member shall lose all rights and privileges of a member of this Local Union, and the International and shall be exempt from the payment of dues and assessments. A member who has withdrawn may subsequently be reinstated without payment of an initiation fee, provided, however, that during the period of withdrawal, such person has not engaged in activities against the best interests of the Local and the International.

Section 3. Any member not complying with either Section 1 or Section 2 shall be subject to payment of the

initiation fee in the Local Union such person shall apply for membership.

ARTICLE X

Discipline

Section 1. (a) The term "discipline" when used in this Article, shall include, without limitation, a fine, removal from office, disqualification to run for office, or suspension or expulsion from membership.

RESPONDENT'S EXHIBIT No. 6**TEXTILE WORKERS UNION
OF AMERICA, AFL-CIO
BY-LAWS****Local Union No. 1029****Nashua, New Hampshire**
• • • •**ARTICLE X****Transfers and Withdrawals**

Section 1. Any member who is in good standing may transfer his membership to another. Local of the International. Upon application to the Financial Secretary of the Joint Board he shall receive a transfer card, which shall admit him to the Local Union to which he desires to be transferred, provided he is eligible for membership in such Local Union and complies with the transfer provisions of the By-Laws governing the Local Union to which he seeks to be transferred.

Section 2. Any member who is in good standing in this Local Union may withdraw from membership upon leaving the industry, and shall receive a withdrawal card. Thereafter, the withdrawing member shall lose all rights and privileges of a member of this Local Union, and the International and shall be exempt from the payment of dues and assessments. A member who has withdrawn may subsequently be reinstated without payment of an initiation fee, provided, however, that during the period of withdrawal, such person has not engaged in activities against the best interests of the Local and the International.

**BEFORE THE NATIONAL LABOR RELATIONS
BOARD
First Region**

**Case Nos.
1-CA-1504 (1-4)
1-CB-1584
1-CB-1460 (1-2)**

**IN THE MATTER OF
GRANITE STATE JOINT BOARD, TEXTILE WORKERS UNION
OF AMERICA, LOCAL 1029, AFL-CIO (International
Paper Box Machine Company)**

**Ward 5 Room
City Hall
Nashua, New Hampshire
Thursday, November 20, 1969**

The above-entitled matter came on for hearing, pursuant to notice, at 10:00 o'clock a.m.

BEFORE:

MILTON JANUS, ESQ., Trial Examiner.

APPEARANCES:

THOMAS P. KENNEDY, ESQ. John F. Kennedy
Federal Building, Boston, Massachusetts, appearing
as Counsel for the General Counsel.

GERARD P. COBLEIGH, ESQ. John F. Kennedy
Federal Building, Boston, Massachusetts, appearing
as Counsel for the General Counsel.

HAROLD B. ROITMAN, ESQ. 6 Beacon Street, Boston,
Massachusetts, appearing on behalf of the Respondent.

* * * * *

[6] MR. KENNEDY: I think we can move on to the area of stipulations. I would offer for purposes of stipula-

tion a letter, a letter dated June 10, 1969, from Local 1029 of the Textile Workers Union of America, AFL-CIO, in Nashua, addressed to Members and signed Leo D. Simard, President. This letter refers to a fine of \$2,000 and as well refers to U. S. Supreme Court and so on. I would offer this for stipulation in this fashion that this letter was sent to all of the 31 individuals involved in this case, employees of the National Paper Box.

TRIAL EXAMINER: Well, who are the individuals involved in this case? How can they be classified?

MR. KENNEDY: Perhaps the only way to do this, your Honor, is to read into the record all their names.

TRIAL EXAMINER: No, but I mean what common bond joins them together?

MR. KENNEDY: Well, all of them have—all of them were members of Textile Workers Union Local 1029; all of them went on strike at the inception of the strike; all of them sent letters of resignation to the Union; and subsequently all of them returned to work; that is essentially their common bond.

TRIAL EXAMINER: Well, that's what I thought, and what I wanted to have on the record. Is that in accordance with your [7] understanding, Mr. Roitman?

MR. ROITMAN: Well, when you say all of them I have to part company. I'm not aware that all of them fall into these categories, but there are a group of people who have been—

TRIAL EXAMINER: Who have resigned or attempted to resign and have gone back to work?

MR. ROITMAN: Attempted to resign.

TRIAL EXAMINER: All right.

MR. KENNEDY: May I offer this then, this letter of June 10, by stipulation?

TRIAL EXAMINER: Well, suppose we mark it as an exhibit, shall we do that, so that we don't have to read it into the record?

MR. KENNEDY: Can we mark for identification as General Counsel's Exhibit No. 2 a June 10 letter signed Leo Simard, June 10, 1969.

(The document above-referred to was marked General Counsel's Exhibit No. 2 for identification.)

TRIAL EXAMINER: Do you have the list of names, Mr. Kennedy, to whom the letter was sent?

MR. KENNEDY: No, this was a general letter addressed to all members.

TRIAL EXAMINER: I see.

MR. ROITMAN: I have no objection to it as a document.

[8] TRIAL EXAMINER: All right. Do you agree that the document is authentic, was sent to all members?

MR. ROITMAN: I have problems with its relevancy but not with its authenticity as a document.

MR. KENNEDY: I would offer it as General Counsel's Exhibit No. 2.

TRIAL EXAMINER: All right. It is received.

* * *

MR. KENNEDY: All right. I would also offer General Counsel's Exhibit No. 3, a two-page document consisting of an August 4, 1969 letter signed Ralph Boucher, Recording Secretary of Local 1029; the second document which could be called 3A is a copy of a charge filed with Mr. Boucher by a member of Local 1029. May I have that marked as General Counsel's Exhibit No. 3 and 3A.

(The documents above-referred to were marked General Counsel's Exhibits No. 3 and 3A for identification.)

TRIAL EXAMINER: Mr. Roitman, do you have any objections?

MR. ROITMAN: No, I have no objection to the fact that this was sent to Mr. Bernier.

MR. KENNEDY: Now I offer this as a document—as General Counsel's 3 and 3A, but also by way of stipulation, this is addressed to Mr. Roger Bernier. He is one of the 31 individuals [9] involved in the present case. I would—I would also wish that by way of stipulation it is agreed that all 31 individuals received similar letters.

TRIAL EXAMINER: All right. Well, first I will receive General Counsel's Exhibit 3 and 3A.

(The documents above-referred to, heretofore marked General Counsel's Exhibits No. 3 and 3A, were received in evidence.)

TRIAL EXAMINER: No, Mr. Roitman, do you have any comments on Mr. Kennedy's offer to stipulate that the same letter was sent to 30 or 31 other individuals?

MR. ROITMAN: Well, of course the same letter was not sent; each individual was charged separately and sent a separate notification addressed to him. This one is one addressed to one Roger Bernier.

TRIAL EXAMINER: Well, other than the superscription are the letters the same?

MR. ROITMAN: Generally speaking that's true. I don't know whether they're identical or not.

TRIAL EXAMINER: All right. The effect is the same; they are charged with violating Article 13 of the by-laws, and they are requested to make an appearance to answer the charges.

MR. ROITMAN: Right.

* * *

[12] **TRIAL EXAMINER:** On the record. The Reporter has been handed by Mr. Kennedy an alphabetical list of 31 names who as Mr. Kennedy previously described are or were employees of International Paper Box Machine Company in September, 1968, when the strike of Textile Workers Local 1029 began, who sent letters of resignation to the company thereafter, and who have since gone back to work. The Reporter will transcribe the list of names into the record.

MR. KENNEDY: Well, for the record may I make a correction. I believe, Your Honor, you said letters of resignation sent to the company. It should be letters of resignation sent to the union.

TRIAL EXAMINER: Yes, of course.

MR. ROITMAN: All right, I take it I'm not being asked to agree to the—any of these matters, simply that Counsel for the General Counsel is offering a list of names of people who will be involved in the hearing.

TRIAL EXAMINER: Yes. If you want to make any comment on [13] the factual statement that Mr. Kennedy has made, you're free to make it now or anytime.

MR. ROITMAN: Well, if it's testimony, I can't agree to it. There's been a blanket statement made with respect

to 31 people, and I can't agree at all that they all automatically have the same factual background.

TRIAL EXAMINER: All right. Well, let's take the 31 names down now.

Bealand, Alonzo; Bernier, Roger; Berube, Marcel; Boutin, Jean; Collard, Eugene; Depontbriand, Robert; Desjardins, Leonard; Dubois, Leo; Duval, Aurel; Francis, Bernard; Gagne, Roger; Gagnon, Adrian; Gamache, Clovis; Guerrette, Robert; Johnson, Hazen; Kimball, Maurice; Levesque, Armand; Makris, Peter; Marquis, Paul; Maynard, Ronald; Mayo, William; McAlister, Franklyn; Michaud, Roland; Nadeau, John; Radziewicz, Felix; Riendeau, Emilien; Roy, Robert; Runowicz, Zennie; Theriault, Alfred; Tremblay, Henry; Tyler, Gerald.

[16] **MR. KENNEDY:** General Counsel would offer this stipulation, that all 31 individuals previously named on the record were employed by International Paper Box Machine Company, went on strike in September of 1968, and at the time that they were employed and the time that they went on strike were members of the Respondent union.

MR. ROITMAN: All right, I have no objection to that stipulation, that as a stipulation I would go further and say that all of these employees who were members of the union voted in favor of conducting a strike against the International Paper Box Machine Company.

MR. KENNEDY: For what it's worth, I'll accept that as a stipulation.

TRIAL EXAMINER: All right. I don't know how anyone can tell; the vote, as I remember the proceeding, was unanimous, but whether all these 31 were at the meeting I have no way of knowing, but at least for my purposes if it's important at all; what is important is that the vote to strike and the vote to possibly impose a fine were taken at duly authorized meetings of the members of the Respondent and were adopted I think unanimously in the case of the strike vote and with only one decenting vote on the other point.

[18] MR. KENNEDY: I offer as General Counsel's 4, letter of resignation of June 6, 1969, signed Alonzo Bealand and addressed to Mr. Pitarya.

TRIAL EXAMINER: Make that 4(1).

* * *

MR. KENNEDY: I move the introduction of General Counsel's Exhibit 4(1).

MR. ROITMAN: No objection.

TRIAL EXAMINER: It's received.

MR. KENNEDY: I ask to have marked for identification as GC4(2) letter of resignation of Marcel Berube.

* * *

[19] TRIAL EXAMINER: Let's save the offer of all of them for one.

MR. KENNEDY: All right. I'm not offering it at this time. I'll make a blanket offer with respect to all letters of resignation after I've identified each one of these. This has been GC4(2), Marcel Berube, September 19, 1969. Next is Jean Boutin, B-o-u-t-i-n.

* * *

[20] TRIAL EXAMINER: All right. All to be marked GC4(3).

* * *

[21] MR. KENNEDY: I would ask to have marked for identification as General Counsel's Exhibit No. 4(4) a June 6, 1969 letter taken by subpoena from the files of the union addressed to who it may concern, Eugene Colard. Let me mark this as GC4(4), if you will.

* * *

[22] MR. KENNEDY: Name of the individual. All right. Fine. Marked for identification as General Counsel's Exhibit 4(5), letter dated July 25, 1969 from Robert dePontbriand.

(The document above-referred to was marked General Counsel's Exhibit No. 4(5) for identification.)

MR. KENNEDY: I mark for identification for General Counsel's Exhibit 4(6), a letter of September 17, 1969, signed Leo DuBois.

(The document above-referred to was marked General Counsel's Exhibit No. 4(6) for identification.)

MR. KENNEDY: Have marked for identification as General Counsel's 4(7), letter of June 20, 1969, from Aurel Duval.

(The document above-referred to was marked General Counsel's Exhibit No. 4(7) for identification.)

MR. KENNEDY: I wish to have marked for identification as General Counsel's 4(8), a letter of June 24, 1969, from Bernard J. Francis.

(The document above-referred to was marked General Counsel's Exhibit No. 4(8) for identification.)

MR. KENNEDY: For identification as General Counsel's Exhibit 4(9), a letter of June 17, 1969 from Roger Gagne.

(The document above-referred to was marked General Counsel's Exhibit No. 4(9) for identification.)

[23] MR. KENNEDY: For identification as General Counsel's 4(10), letter of August 21, 1969 from Adrian Gagnon.

(The document above-referred to was marked General Counsel's Exhibit No. 4(10) for identification.)

MR. KENNEDY: For identification as General Counsel's 4(11), a letter of July 9, 1969 from Clovis Gamache.

(The document above-referred to was marked General Counsel's Exhibit No. 4(11) for identification.)

MR. KENNEDY: For identification as General Counsel's 4(12), a letter of May 9, 1969 signed Hazen Johnson.

(The document above-referred to was marked General Counsel's Exhibit No. 4(12) for identification.)

MR. KENNEDY: For identification as General Counsel's 4(13), letter of November 25, 1968 from Maurice K. Kimball II. This is not an issue, but I'll make it—put it in the record anyway.

MR. ROITMAN: It's already been introduced in the previous [24] case.

TRIAL EXAMINER: Yes. All right, let's introduce it again. Let's keep it in order, yes.

MR. KENNEDY: That's 13, I believe.

(The document above-referred to was marked General Counsel's Exhibit No. 4(13) for identification.)

MR. KENNEDY: For identification as General Counsel's 4(14), letter of June 25, 1969 signed Armand Levesque.

(The document above-referred to was marked General Counsel's Exhibit No. 4(14) for identification.)

MR. KENNEDY: For identification as General Counsel's Exhibit 4(15), letter of June 12, 1969 signed Peter Makris Sr.

(The document above-referred to was marked General Counsel's Exhibit No. 4(15) for identification.)

MR. KENNEDY: For identification as General Counsel's Exhibit 4(16), a letter of September 7, 1969—June 7, 1969, signed by Paul R. Marquis.

(The document above-referred to was marked General Counsel's Exhibit No. 4(16) for identification.)

MR. KENNEDY: For identification as General Counsel's 4(17), letter of August 15, 1969 signed Ronald Maynard.

(The document above-referred to was marked General Counsel's Exhibit No. 4(17) for identification.)

[25] **MR. KENNEDY:** General Counsel's 4(18), a letter of June 23, 1969 signed William J. Mayo.

(The document above-referred to was marked General Counsel's Exhibit No. 4(18) for identification.)

MR. KENNEDY: For identification as General Counsel's 4(19), a letter of June 28, 1969 signed Franklyn H. McAlister.

(The document above-referred to was marked General Counsel's Exhibit No. 4(19) for identification.)

MR. KENNEDY: For identification as General Counsel's 4(20), a July 26th, 1969 letter signed Roland Michaud.

(The document above-referred to was marked General Counsel's Exhibit No. 4(20) for identification.)

MR. KENNEDY: As General Counsel's 4(21), a letter, two documents, a letter and the envelope. The letter is improperly dated Monday the 23rd, 1969, but the envelope indicates a postmark of June 23rd, 1969, signed John Nadeau, those two documents.

(The documents above-referred to were marked General Counsel's Exhibit No. 4(21) for identification.)

* * *

[26] **MR. KENNEDY:** For identification as General Counsel's 4(22), letter undated, two documents, a letter and the accompanying envelope, registered letter envelope, the envelope noting a November 5, 1968 stamp and signed Felix Radziewicz.

* * *

MR. KENNEDY: For identification as General Counsel's 4(23), letter of August 8, 1969 signed Emilien Riendeau.

(The document above-referred to was marked General Counsel's Exhibit No. 4(23) for identification.)

MR. KENNEDY: For identification as General Counsel's 4(24), a letter of June 12, 1969 signed Robert Roy.

[27] (The document above-referred to was marked General Counsel's Exhibit No. 4(24) for identification.)

MR. KENNEDY: For identification as General Counsel's Exhibit No. 4(25), a letter of August 15, 1969 signed Zennie S. Runowicz.

(The document above-referred to was marked General Counsel's Exhibit No. 4(25) for identification.)

MR. KENNEDY: For identification as General Counsel's 4(26), letter of August 16, 1969 signed Henry Tremblay.

(The document above-referred to was marked General Counsel's Exhibit No. 4(26) for identification.)

MR. KENNEDY: As General Counsel's Exhibit 4 (27), letter of August 1st, 1969 signed Alfred Theriault.

(The document above-referred to was marked General Counsel's Exhibit No. 4(27) for identification.)

MR. KENNEDY: That completes the letters of resignation which the union has turned over to the General Counsel pursuant to subpoena. I would now offer into evidence General Counsel's 4(1) through 4(27).

TRIAL EXAMINER: Mr. Roitman, do you have any objection?

MR. ROITMAN: I have no objection to the documents themselves. I can't agree with any of the comments made by Counsel as these were recited, but these are all documents that came [28] from the files of the Granite State—

TRIAL EXAMINER: All right, I will receive General Counsel's Exhibits 4(1) through (27) in evidence.

* * * *

ROBERT GUERRETTE

was called as a witness by and on behalf of the General Counsel and, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

* * * *

[29] **Q** Were you employed by International Paper Box Machine Company prior to September, 1968?

A Yes.

Q And did you go on strike in September, 1968?

A Yes.

Q Now, Mr. Guerrette, did you at any time after that, after September, 1968, send to the union a letter or telegram notifying them of your resignation from the union?

A Yes, I did.

Q Can you recall as exactly as you can when you sent the telegram?

A It was in June of '69.

Q In June of '69?

A Yes.

Q And can you recall—can you tell us when you returned to work, if at all, at the International Paper Box Machine?

A July 14.

Q 1969?

A '69.

* * * *

CROSS EXAMINATION

* * * *

[31] Q (By Mr. Roitman) did you in connection with the strike engage in any picketing?

A Yes.

Q And did you receive—did you accept personal responsibility for the insurance coverage which the union provided?

A Yes.

* * * *

[32] REDIRECT EXAMINATION

Q (By Mr. Kennedy) Well, no, did anyone else accompany you to the Western Union office at that time?

[33] A Yes, there were two more individuals.

Q Who were they?

A Gerry Tyler and Roger Bernier.

Q And did they also sign the telegram?

A Yes.

* * * *

TRIAL EXAMINER: Well, I don't think it's necessary to get the Western Union records in either. Would you describe what type of communication you received from the union after [34] you sent the telegram?

WITNESS GUERRETTE: It was a statement acknowledging that they received it and as of the date out of the union.

TRIAL EXAMINER: A statement from whom?

WITNESS GUERRETTE: The union.

TRIAL EXAMINER: Was that a written letter?

WITNESS GUERRETTE: It was a typed letter.

* * * *

[42]

GERALD JOHN TYLER

was called as a witness by and on behalf of the General Counsel and, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

* * * *

[43] **Q** Hudson, New Hampshire? All right. Mr. Tyler, can you tell us if sometime during the year 1969 you communicated with the union concerning your membership in that organization?

A Yes, I did.

Q Can you tell us about when this was?

A In June.

Q In June of 1969. And how did you do this?

A I went to Western Union and sent them a telegram.

Q And can you recall for us what the telegram said at best you recall? You don't have to be exact. As best you recall.

A I sent it to the union, it was addressed as we, because there was two others involved.

Q And those two others are whom?

A Robert Guerrette and Roger Bernier.

Q Yes, and can you recall what it said, the body of the telegram?

A It was addressed to the Textile Workers Union of America, and something like we hereby resign from the union and with the date. That's all I can remember.

MR. KENNEDY: All right. I have no further questions.

TRIAL EXAMINER: All right. Did the three of you—Who did you go to the Western Union office with?

WITNESS: Robert Guerrette and Roger Bernier.

[44] **TRIAL EXAMINER:** The three of you were there at the same time?

WITNESS TYLER: Yes.

* * * *

CROSS EXAMINATION

Q (By Mr. Roitman) All right, you participated in the strike, didn't you?

A I went on strike, yes.

Q All right, and you also signed a document for insurance coverage by the union?

* * *

[45] Q (By Mr. Roitman) Did you—The question, as I recall it, was did you sign a document with respect to the insurance coverage which the union was providing for strikers?

A Yes, I did.

Q Do you recall when you signed that?

A No.

Q During the course of the strike, in any event?

A Yes.

* * *

[46] TRIAL EXAMINER: Did you receive any communication from the union which referred to your resignation?

WITNESS TYLER: Not that I recall.

* * *

[47] ROGER BERNIER

was called as a witness by and on behalf of the General Counsel and, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

* * *

Q Sometime in 1969, Mr. Bernier, did you communicate with the union about your membership? Did you send to the union anything about your membership in the union?

A No.

Q Can you recall any document, sending any document to the union at all?

A What do you mean by that?

Q Well, letter or anything?

A I sent them a telegram saying that I was resigning.

Q And when did you send the telegram? When was this?

[48] A June the 26th.

Q 1969?

A Yes.

Q Now, was this the same telegram that Mr. Tyler and Mr. Guerette talked about?

A Yes.

* * *

CROSS EXAMINATION

Q (By Mr. Roitman) All right, Mr. Bernier, you supported the strike, didn't you?

A Yes.

Q And you were on the picket line?

A Yes, for a while.

Q And you received strike benefits from the union?

A For a while.

Q And you also received insurance coverage from the union?

A Yes, but I paid for it.

Q You signed a note obligating yourself to pay for insurance?

A Yes.

Q Do you remember when that was?

A No.

Q You do remember that in addition to the insurance coverage you also received some money from the union?

A Well, yes, first four or five weeks or so.

* * *

[50] LEONARD DESJARDINS

was called as a witness by and on behalf of the General Counsel and, having been first duly sworn, was examined and testified as follows:

[51] DIRECT EXAMINATION

* * *

Q Now, Mr. Desjardins, sometime during 1969 did you communicate with the union about your membership?

- A Yes.
Q And about when was this?
A Oh, June 15th or so.
Q Of '69?
A Yes.
Q And how did you communicate?
A I sent them a registered letter.
Q What did that letter say, do you remember?
A Saying that I as of this date resign from the union.

* * *

CROSS EXAMINATION

- Q (By Mr. Roitman) You were supporting the strike?
A Yes, sir.
Q And you received strike benefits from the union?
A For services rendered, yes.
Q As a matter of fact, you received some \$1,542.00 from the union?
[52] A Yes, could be.
Q And you also had insurance coverage from the union?
A No, sir.
Q You signed that, you did not want insurance coverage?
A I did not sign.
Q You indicated that you didn't want it?
A Right.
Q Can you tell us when was the last check that you received from the union?
A June 12th, maybe.
Q And did you receive any letters from the union?
A Letters, yes.
Q Are those the letters preferring charges against you?
A Right.

* * *

[54]

ROGER BERNIER

was recalled:

FURTHER CROSS EXAMINATION

Q (By Mr. Roitman) Mr. Bernier, I show you a document that's been introduced in evidence as General Counsel's Exhibit 3. It's a letter with another letter clipped to it addressed to you. Do you recall receiving that?

A (Indicating yes.)

Q Now, you testified that you received three letters. Are these part of the letters that you're talking about?

A Yes, letters like that. There's two more.

Q There's two more?

A Well—

Q Can you tell us when you received the others, whether before or after this one? This one is dated August 4th.

A After.

. . . .

[55]

REDIRECT EXAMINATION

Q (By Mr. Kennedy) I show you this document marked as General Counsel's Exhibit No. 7 for identification, the letter dated August 22, 1969, signed Leo Simard. Did you receive that letter?

A Yes, I received that.

. . . .

Q Showing you what has been marked as General Counsel Exhibit No. 8 for identification, a letter addressed to you dated August 27, 1969, signed Thomas J. Pitarys. Did you receive that letter?

A Yes.

. . . .

RECROSS EXAMINATION

[56] Q (By Mr. Roitman) Were these the letters that you were referring to before?

A Yes, sir.

Q You don't have any other letters, do you?

A No.

. . . .

[61] MR. KENNEDY: I have nothing further. I might state that I have obtained information during the luncheon recess to the effect that Western Union does have a copy of the telegram in question, also with an indication that it was receipted for and delivered to the Respondent. Now my question at this point is should we, if the credibility of these witnesses is in issue with respect to whether or not they actually telegraphed a resignation, then we might pursue this matter by approaching Western Union with a subpoena. They said they would be responsive to a subpoena. However, this may be unnecessary if the union during the luncheon recess has obtained a better—

MR. ROITMAN: I'm prepared to state, we've checked and the union does have a notation that a telegram was received on June 23rd, but we apparently don't have any such document which we've been able to put our hands on at least during the luncheon recess, but there is a notation that a telegram was received, signed for, I think, by Mr. Waters, on June—

TRIAL EXAMINER: But you don't have a copy of it available?

MR. ROITMAN: No, I don't have one.

* * *

[62] MR. ROITMAN: I will state also that during the recess we did check the files and we have obtained from the files a document, an unsigned document dated June 16th which refers to Leonard Dejardins. Apparently this was kept separate because it is unsigned. There was testimony that he sent a letter and I am prepared to produce this as what item that we have in our files with respect to Mr. Dejardins.

* * *

TRIAL EXAMINER: Oh. And Mr. Roitman, you have an unsigned letter? How do you know it's from Mr. Dejardins?

MR. ROITMAN: It has his name on it. It says "Gentlemen, as of this date, June 16th, I, Leonard Desjardins, hereby resign from Local 1029 for reasons too

numerous to mention. I remain; all one word, and then no signature.

.

[68] MR. ROITMAN: I suppose it's incumbent upon us to show one of the reasons why we don't think they resigned.

TRIAL EXAMINER: Well, you're relying on something more than the provision of the Constitution of the various labor organizations. As I recall, the by-laws of all the labor organizations involved here make no provision for resignation.

MR. ROITMAN: That's correct.

TRIAL EXAMINER: All right. Now, 31 individuals have, despite the Constitutions, attempted to resign.

MR. ROITMAN: The Constitutions, I may say, do make provisions for withdrawals under certain circumstances, but there's no specific clause with respect to resignation.

TRIAL EXAMINER: Now despite that, certain individuals have attempted to resign, at least they've sent letters saying they are resigning. Now your position is that despite those letters, and without regard to the Constitutions, the resignations are ineffective for some other reason?

MR. ROITMAN: Yes, I think, for example, that in most of these resignations were procured by the company under circumstances which would invalidate them anyway.

.

[72] HAZEN R. JOHNSON

was called as a witness by and on behalf of the General Counsel and, having been first duly sworn, was examined and testified as follows:

.

[73] DIRECT EXAMINATION

.

Q And when did you first begin working for International Paper Box Machine Company?

A 1955.

Q And were you a member of the Textile Workers Union while you worked there?

A Yes.

Q And did you go on strike on September 20th, 1968?

A Yes.

Q And did you subsequently resign from the union?

A I did.

Q Now, showing you what has been marked as General Counsel's Exhibit No. 8, did you receive a letter—you can pay no attention to whom it is addressed, but look at the body of the letter, there's two pages to it, and answer whether or not you received a similar letter to this.

A Yes, I did.

Q Now, showing you what has been marked as General [74] Counsel's Exhibit No. 9, did you receive a letter similar to that letter?

A Yes, I did.

Q In other words, it's the same letter except for the person's name at the top?

A Right.

Q Now, showing you what is marked as General Counsel's Exhibit No. 10, did you receive a writ?

A It was left at my house. I wasn't there.

Q I see. Did it have reference to insurance as well, or just the—

A That I couldn't tell.

Q All right. Now, Mr. Johnson, when you decided to resign from the union did you obtain legal assistance?

A I had Attorney Wilcox make out my resignation for me.

Q You went to Mr. Wilcox?

A Yes.

Q All right. And did he draft a resignation for you?

A He made me extra copies, yes.

Q He did. And what did you do with the extra copies you received?

A I gave them to some of the other boys that asked for them and wanted them.

Q I see. Do you recall at all how many extra copies were involved?

[75] A I have no idea. There was quite a few of them.

Q (By Mr. Kennedy) Now I show you General Counsel's Exhibit 10(1). Is this the actual writ you received?

A Yes, it is.

CROSS EXAMINATION

[76] Q Now, you say you'd been a member of the union since about 1955?

A I resigned in the middle of that period.

Q When you first went to this company you joined the union, or shortly after you went to the company you joined the union?

A Right.

Q And then sometime during the time that you were employed by the company you resigned from the union?

A I resigned from it.

[77] Q And the union accepted your resignation at that time?

A It did.

Q And informed you of it; they agreed to accept your resignation at that time, did they not?

A I don't know as I ever got any letter stating it.

Q Well, there was a period of time when not only did they notify you they accepted your resignation, but you didn't pay any dues, did you?

A No.

Q And then at a later time you decided that you'd join the union again?

A Right.

Q And so you rejoined the union at that time?

A I did.

Q And the other occasion when you resigned from the union there was no strike in progress, was there?

A No.

Q Now, in this occasion you were in favor of the strike beginning September?

A I didn't vote.

Q You joined the picket line?

A Yes.

Q And you picketed regularly in front of the plant?

A For a while.

Q And each week you received a check from the union?

[78] A Yes.

Q Now, do you recall that you signed a statement like this [79] with respect to your insurance?

A I did.

MR. ROITMAN: All right. I understand that Counsel for the General Counsel has no objection to this as a form which each of the individuals signed, in the event I offer it as Respondent's 2, I believe.

TRIAL EXAMINER: OK. Respondent's 2 is received.

(The document above-referred to, heretofore marked Respondent's Exhibit No. 2, was received in evidence.)

Q (By Mr. Roitman) And in your case you were advised by the union that your total insurance premiums that they paid in your behalf were \$220.14?

A No, that's not correct. They sent me a statement first of \$181.19.

Q All right. And then were you subsequently given another [80] statement?

A Another statement three or four weeks after that, it was \$208.00 and something.

[81]

ALONZO BEALAND

was called as witness by and on behalf of the General Counsel and, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

Q (By Mr. Kennedy) Mr. Bealand, I show you what has been marked as General Counsel's Exhibit No. 3 and

ask you to look at that letter and the attachment to it; there's an attachment.

.

Q And there's an attachment. Now, except for the name at the top, the addressee, did you receive the same letter?

A Yes, I did.

Q You did. All right. Now, showing you what has been marked as General Counsel's 9, except for the name at the top did you receive that exact letter?

A That's mine.

Q That's your letter?

A Mmmmm.

Q Now, showing you General Counsel's 10, you notice the name at the top is Alonzo Bealand. Did you receive that writ?

[82] A Yes, I did.

.

Q (By Mr. Roitman) Mr. Bealand, you participated in the strike, did you not?

A Yes.

Q And you engaged in picketing activities?

A Yes.

Q And you received benefit payments from the union?

A \$20.00.

.

[84]

ROGER BERNIER

was recalled as a witness by and on behalf of the General Counsel and, having been previously sworn, was examined and testified as follows:

.

FURTHER REDIRECT EXAMINATION

.

[85] Q Showing you what has been marked as General Counsel's Exhibit No. 9, ignoring the name at the top, did you receive that letter?

A Yes.

Q Can you remember about when you received it?

A No.

Q All right. Do you remember when you returned to work?

A July the 27th.

Q And did you receive this letter after you returned to work?

A Yes.

Q All right. Now, showing you—

MR. KENNEDY: I'll have this marked for identification as General Counsel's Exhibit 10(2).

Q Showing you what has been marked for identification as General Counsel's Exhibit No. 10(2), is that the writ which you received from the State of New Hampshire Court?

A Yes.

* * *

[86] FURTHER RECROSS EXAMINATION

Q (By Mr. Roitman) I show you Respondent's Exhibit 3. Did you receive that before your resignation?

A Yes.

Q All right. And—

MR. KENNEDY: Which?

MR. ROITMAN: That's the letter.

MR. KENNEDY: Oh, that's Respondent's 3?

MR. ROITMAN: 3.

Q Did you sign an insurance form for the union, showing you Respondent's 2?

A That's all signed and paid for.

Q You signed one of these?

A Yes.

Q All right. And you also received benefits during the course of the strike?

A Yes, sir.

* * *

[88] MARCEL BERUBE

was called as a witness by and on behalf of the General Counsel and, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

. . . .

Q All right. Can you tell us, Mr. Berube, when you resigned from the union?

A September 18, 1968.

. . . .

Q Now, when did you—All right. Strike that. When did you return to work for the company, do you remember? You went on strike?

A September 22.

. . . .

[89] Q OK. Now, showing you what has been marked as General Counsel's Exhibit No. 3, and I believe 3A, General Counsel's 3A, would you look at that, and did you receive that letter?

A I sure did.

Q All right. And now showing you General Counsel's Exhibit No. 9, did you receive that letter?

A Yes, sir.

. . . .

Q Now, showing you what has been marked as General Counsel's Exhibit 10(3), which purports to be a writ from a Court of the State of New Hampshire, Marcel Berube, did you receive that writ?

A Yes, sir.

. . . .

[90]

CROSS EXAMINATION

. . . .

Q And did you receive some benefits from the union during the strike?

A Yes, sir.

Q And you participated in the strike until this September?

A Yes.

. . . .

[98]

JEAN BOUTIN

was called as a witness by and on behalf of the General Counsel and, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

* * *

Q Now, Mr. Boutin, when—Do you remember when you returned to work at the company?

A I returned after I got my resignation.

Q When was that, do you remember?

A The first Monday after vacation, I think.

* * *

Q Do you remember about when that was?

[94] A Huh?

Q Do you remember about when that was?

A Somewheres around August 15th.

Q Would August 11th seem right?

A Right.

Q All right. Now, showing you General Counsel's Exhibit No. 3 and 3A, I want you to look at these two documents and except for the name up on the front at the top did you receive those documents in the mail?

A Yes, I received those.

Q You did? Now showing you General Counsel's No. 9, except for the name at the top did you receive that letter?

A I received that letter.

* * *

Q Now, showing you what has been marked for identification as General Counsel's Exhibit 10(4), I want you to look at this document, and with your name at the top, and tell me if you received that?

A Yes, I received that.

* * *

[102] TRIAL EXAMINER: Well, it's obvious that the union gave certain benefits to those who supported it, and after they stopped supporting it the union

wouldn't pay them strike benefits anymore, I suppose, since they were no longer on strike.

MR. ROITMAN: That's right. Most of them were brought up on charges as these 81 indicate. There's no mystery about that. The union's position has been very clear. Those people who were—

TRIAL EXAMINER: All right. I wonder if we don't have a typical enough sample in the witnesses who have testified so that we could dispose of the case on what we have with perhaps [103] a stipulation that the other witnesses who would be called would testify in the same manner, that is that they joined the strike at its inception, that sometime during the strike they decided to resign, while they were on strike the union paid them benefits if they had no other job and were not receiving old age benefits, and—

MR. KENNEDY: Along with the documents, the three documents.

TRIAL EXAMINER: Yes.

MR. KENNEDY: I would stipulate to that.

MR. ROITMAN: Well, all right.

* * *

[104] TRIAL EXAMINER: All right, I understand during the recess a stipulation has been worked out between the General Counsel and the Respondent. Mr. Cobleigh will state the terms.

MR. COBLEIGH: Stipulation reads as follows: that all employees involved in this proceeding joined the strike at its inception, sometime during the strike they submitted letters designated in the record as General Counsel's 4(1) through 4(27) of resignation from the union, while on strike the union paid strike benefits to those who applied on Respondent's Exhibit 4, the union paid insurance benefits and received Respondent's Exhibit 2 from all involved employees, General Counsel 3, 3A, 9 and 10 were issued and received by all involved employees, Respondent's Exhibits 2, 3 and 4 were executed and/or received by all employees.

TRIAL EXAMINER: Mr. Roitman?

MR. ROITMAN: That's acceptable.

TRIAL EXAMINER: All right. All right, the stipulation proposed is received. Is there any further testimony then?

MR. KENNEDY: I don't believe there's anything further on the General Counsel's case, your Honor, but let me check my [105] notes first.

TRIAL EXAMINER: All right. And I think perhaps this might be the time too to put into the record something relating to the current status of the suits by the union, the Court actions by the union against the employees involved here.

* * *

[108] **TRIAL EXAMINER:** Oh, in an off-the-record discussion I raised some questions with respect to the pendency of the Court suit. Mr. Kerrigan, who is best informed about the Court suit since he represents the defendants who are the 31 people involved here, is not present this afternoon, and it was agreed that I [109] would leave a General Counsel's Exhibit number open and that Mr. Kennedy would obtain from Mr. Kerrigan information relating to the current status of that Court action and would file it with me and with copies, of course, to all the other parties.

* * *

GENERAL COUNSEL'S EXHIBIT No. 1(g)

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS
BOARD
FIRST REGION

IN THE MATTER OF

GRANITE STATE JOINT BOARD, TEXTILE WORKERS UNION
OF AMERICA, LOCAL 1029, AFL-CIO (International
Paper Box Machine Company)

and

PAUL R. MARQUIS, an individual Case No. 1-CB-1504-1
EUGENE COLLARD, an individual Case No. 1-CB-1504-2
HAZEN R. JOHNSON, an individual Case No. 1-CB-1504-3
PETER MAKRIK, SR., an individual Case No. 1-CB-1504-4

and

JOSEPH M. KERRIGAN, ESQUIRE, an individual
Case No. 1-CB-1534

ORDER CONSOLIDATING CASES,

COMPLAINT AND NOTICE OF HEARING

It having been charged in Case No. 1-CB-1504-1 by Paul R. Marquis, an individual; Case No. 1-CB-1504-2 by Eugene Collard, an individual; Case No. 1-CB-1504-3 by Hazen R. Johnson, an individual; Case No. 1-CB-1504-4 by Peter Makris, Sr., an individual, and Case No. 1-CB-1534 by Joseph M. Kerrigan, Esquire, an individual, that Granite State Joint Board, Textile Workers Union of America, Local 1029, AFL-CIO, herein called Respondent, has engaged in, and is engaging in, unfair labor practices affecting commerce as set forth and defined in the National Labor Relations Act, as amended, 29 U.S.C. Sec. 151 *et seq.*, herein called the Act, the General Counsel of the National Labor Relations Board, herein called the Board, by the undersigned Regional Director of the First Region, having duly considered the matter and

deeming it necessary in order to effectuate the purposes of the Act, and to avoid unnecessary costs or delay,

HEREBY ORDERS, pursuant to Section 102.33 of the Board's Rules and Regulations, Series 8, as amended, that these cases be, and they hereby are, consolidated.

Said cases having been consolidated for hearing, the General Counsel of the Board, on behalf of the Board, by the undersigned Regional Director, pursuant to Section 10(b) of the Act and the Board's Rules and Regulations, Series 8, Section 102.15 hereby issues this Order Consolidating Cases, Complaint and Notice of Hearing and alleges as follows:

1(a). The Charges in Case No. 1-CB-1504(1-4) were filed on June 24, 1969, and copies thereof served upon Respondent on June 24, 1969.

1(b). The Charge in Case No. 1-CB-1534 was filed on September 12, 1969 and a copy thereof served upon Respondent on September 12, 1969.

2. International Paper Box Machine Company (hereinafter called the Company) at all times material herein is and has been a corporation duly organized under and existing by virtue of the laws of the State of New Hampshire.

3. At all times herein mentioned the Company has maintained its principal office and place of business at Northeastern Boulevard in the City of Nashua, County of Hillsboro and State of New Hampshire, and is now and has been continuously engaged at said plant in the manufacture, sale and distribution of paper box folding and gluing machinery and related products.

4(a). The Company in the course and conduct of its business, causes, and continuously has caused at all times herein mentioned, large quantities of metal used by it in the manufacture of paper box folding and gluing machinery to be purchased and transported in interstate commerce from and through various States of the United States other than the State of New Hampshire, and causes, and continuously has caused at all times herein mentioned, substantial quantities of paper box folding and gluing machinery to be sold and transported from

said plant in interstate commerce to States of the United States other than the State of New Hampshire.

4(b). The Company, in the course and conduct of its business, annually receives from points outside of the State of New Hampshire goods valued in excess of \$50,000 and annually ships to points outside of the State of New Hampshire goods valued in excess of \$50,000.

5. The aforesaid Company is and has been engaged in commerce within the meaning of the Act.

6. Respondent is a labor organization within the meaning of Section 2(5) of the Act, and has its principal office and place of business at 21 High Street in the City of Nashua, County of Hillsboro, and State of New Hampshire.

7. Respondent by its officers, agents, organizers and representatives from on or about June 10, 1969 has restrained and coerced and is restraining and coercing employees of the Company in the exercise of rights guaranteed in Section 7 of the Act by:

(a) Threatening at Nashua, New Hampshire reprisals in the form of fines to employees of the Company who are not Union members if they failed to support Respondent's strike against the Company;

(b) Threatening at Nashua, New Hampshire reprisals in the form of excessive fines to employees of the Company if they failed to support Respondent's strike against the Company;

(c) Imposing at Nashua, New Hampshire reprisals in the form of fines upon employees who are not Union members and who returned to work at the Company during the strike;

(d) Imposing at Nashua, New Hampshire reprisals in the form of excessive fines upon employees who returned to work at the Company during the strike;

(e) Instituting in the Superior Court of the State of New Hampshire at Manchester legal proceedings for the collection of the aforesaid fines against employees who are not Union members and who returned to work at the Company during the strike;

(f) Instituting in the Superior Court of the State of New Hampshire at Manchester legal proceedings for the collection of the aforesaid excessive fines against employees who returned to work at the Company during the strike.

8. By reason of the acts described in Paragraph 7 above Respondent has restrained and coerced and is restraining and coercing the Company's employees in the exercise of the right guaranteed by the Act and the Respondent did engage in and is engaging in unfair labor practices within the meaning of Section 8(b) (1) (A) of the Act.

9. The activities of Respondent, described in Paragraph 7, occurring in connection with the operations of the Company described in Paragraphs 3, 4 and 5 above, have a close, intimate and substantial relation to trade, traffic and commerce among the several states and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce, and constitute unfair labor practices affecting commerce within the meaning of Section 8(b) (1) (A) and Section 2(6) and (7) of the Act.

PLEASE TAKE NOTICE that on the 13th day of November, 1969, at 10:00 o'clock in the forenoon, Eastern Standard Time, at the Aldermanic Chambers, City Hall, Nashua, New Hampshire, a hearing will be conducted before a duly designated Trial Examiner of the National Labor Relations Board on the allegations set forth in the above Complaint, at which time and place you will have the right to appear in person, or otherwise, and give testimony. Form NLRB-4668, Statement of Standard Procedures in Formal Hearings Held before the National Labor Relations Board in Unfair Labor Practice Cases, is attached.

You are further notified that, pursuant to Sections 102.20 and 102.21 of the Board's Rules and Regulations, the Respondent shall file with the undersigned Regional Director, acting in this matter as agent of the National Labor Relations Board, an original and four (4) copies of an Answer to said Complaint within ten (10) days from the service thereof and that unless it does so, all of

the allegations in the Complaint shall be deemed to be admitted to be true and may be so found by the Board.

WHEREFORE, the General Counsel of the National Labor Relations Board, on behalf of the Board, by the Regional Director of the First Region, on this 20th day of October, 1969, issues this Order Consolidating Cases, Complaint and Notice of Hearing against Granite State Joint Board, Textile Workers Union of America, Local 1029, AFL-CIO, Respondent herein.

/s/ Albert J. Hoban
ALBERT J. HOBAN, Director
Region One
National Labor Relations
Board
Boston, Massachusetts 02203

Form NLRB-4668

(9-67)

(C CASES)

SUMMARY OF STANDARD PROCEDURES IN FORMAL HEARINGS HELD BEFORE THE NATIONAL LABOR RELATIONS BOARD IN UNFAIR LABOR PRACTICE CASES AS TAKEN FROM THE BOARD'S PUBLISHED RULES AND REGULATIONS AND STATEMENTS OF PROCEDURE

The hearing will be conducted by a Trial Examiner of the National Labor Relations Board. He will preside at the hearing as an independent, impartial trier of the facts and the law and his decision in due time will be served on the parties. His headquarters are either in Washington, D. C. or San Francisco, California.

At the date, hour, and place for which the hearing is set, the Trial Examiner, upon the joint request of the parties, will conduct a "prehearing" conference, prior to or shortly after the opening of the hearing, to assure that the issues are sharp and clear-cut; or he may, on his own initiative, conduct such a conference. He will preside at any such conference, but he may, if the occasion arises, permit the parties to engage in private discussions. The conference will not necessarily be recorded, but it may well be that the labors of the conference will be evinced in the ultimate record—for example, in the form of statements of position, stipulations, and concessions. Except under unusual circumstances, the Trial Examiner conducting the prehearing conference will be the one who will conduct the hearing; and it is expected that the formal hearing will commence or be resumed immediately upon completion of the prehearing conference. No prejudice will result to any party unwilling to participate in or to make stipulations or concessions during any prehearing conference.

(This is not to be construed as preventing the parties from meeting earlier for similar purposes. To the contrary, the parties are encouraged to meet prior to the time set for hearing in an effort to narrow the issues.)

Parties may be represented by an attorney or other representative and present evidence relevant to the issues.

An official reporter will make the only official transcript of the proceedings, and all citations in briefs and arguments must refer to the official record. The Board will not certify any transcript other than the official transcript for use in any court litigation. Proposed corrections of the transcript should be submitted, either by way of stipulation or motion, to the Trial Examiner for his approval.

All matter that is spoken in the hearing room while the hearing is in session will be recorded by the official reporter unless the Trial Examiner specifically directs off-the-record discussion. In the event that any party wishes to make off-the-record statements, a request to go off the record should be directed to the Trial Examiner and not to the official reporter.

Statements of reasons in support of motions and objections should be specific and concise. The Trial Examiner will allow an automatic exception to all adverse rulings, and, upon appropriate order, an objection and exception will be permitted to stand to an entire line of questioning.

All exhibits offered in evidence shall be in duplicate. Copies shall also be supplied to other parties. If a copy of any exhibit is not available at the time the original is received, it will be the responsibility of the party offering such exhibit to submit the copy before the close of hearing. In the event such copy is not submitted, and the filing thereof has not for good reason shown been waived by the Trial Examiner, any ruling receiving the exhibit may be rescinded and the exhibit rejected.

Any party shall be entitled, upon request, to a reasonable period at the close of the hearing for oral argument, which shall be included in the stenographic report of the hearing. In the absence of a request, the Trial Examiner may himself ask for oral argument, if at the close of the hearing he believes that such argument would be beneficial to his understanding of the contentions of the parties and the factual issues involved.

Any party shall also be entitled upon request made before the close of the hearing, to file a brief or proposed findings and conclusions, or both, with the Trial Examiner who will fix the time for such filing.

Attention of the parties is called to the following requirements laid down in Section 102.42 of the Board's Rules and Regulations with respect to the procedure to be followed *before* the proceeding is transferred to the Board:

No request for an extension of time within which to submit briefs or proposed findings to the Trial Examiner will be considered unless received by the Chief Trial Examiner in Washington, D. C. (or, in cases under the San Francisco, California branch office of Trial Examiners, the Associate Chief Trial Examiner in charge of such office) at least 3 days prior to the expiration of time fixed for the submission of such documents. Notice of request for such extension of time must be served simultaneously upon all other parties, and proof of such service furnished to the Chief Trial Examiner or Associate Chief Trial Examiner, as the case may be. All briefs or proposed findings filed with the Trial Examiner must be submitted in triplicate, and may be in typewritten, printed, or mimeographed form, with service upon the other parties.

In due course the Trial Examiner will prepare and file with the Board his decision in this proceeding, and will cause a copy thereof to be served upon each of the parties. Upon filing of the said decision, the Board will enter an order transferring this case to itself, and will serve copies of that order, setting forth the date of such transfer, upon all parties. At that point, the Trial Examiner's official connection with the case will cease.

The procedure to be followed before the Board from that point forward, with respect to the filing of exceptions to the Trial Examiner's Decision, the submission of supporting briefs, requests for oral argument before the Board, and related matters, is set forth in the Board's Rules and Regulations, Series 8, as amended, particularly in Section 102.46, and following sections. A summary of

the more pertinent of these provisions will be served upon the parties together with the order transferring the case to the Board.

Adjustments or settlements consistent with the policies of the Act reduce government expenditures and promote amity in labor relations. Upon request, the Trial Examiner will afford reasonable opportunity during the hearing for discussions between the parties if adjustment appears possible, and may himself suggest it.

GENERAL COUNSEL'S EXHIBIT No. 1(L)

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS
BOARD

FIRST REGION

Case No. I-CB-1504-1-4

Case No. I-CB-1534

IN THE MATTER OF

GRANITE STATE JOINT BOARD, TEXTILE WORKERS UNION
OF AMERICA, LOCAL 1029, AFL-CIO (International
Paper Box Machine Company)

ANSWER OF THE GRANITE STATE JOINT BOARD
TEXTILE WORKERS UNION OF AMERICA, LO-
CAL 1029, AFL-CIO

The Granite State Joint Board, Textile Workers of
America answer the allegations as follows:

The Respondent admits Paragraph 1 & 6.

The Respondent has no knowledge of the allegations in
Paragraph 2, 3, 4a, 4b, 5.

The Respondent denies Paragraph 7a, 7b, 7c, 7d, 8, 9.

Further answering, the defendant states that the is-
sues in this case have been subject of a previous action
before the Board entitled Granite State Joint Board, Tex-
tile Workers Union of America, Local 1029, AFL-CIO
and Felix Radziewicz, and Maurice K. Kimball II, Case
No. I-CB-1460-2, tried on 1969 which was decided by
Trial Examiner, Milton Janus on June 4, 1969. The
Trial Examiner "recommended that the complaint be dis-
missed in its entirety" TXD 315-69. This decision de-
cided the issues raised in the present complaint.

This decision of the Trial Examiner was appealed by
Counsel for the General Counsel. This appeal is still
pending before the Board. In addition on July 3, 1969 the
Counsel for the General Counsel moved to reopen the case

for the purpose of submitting further evidence. This motion is still pending before the Board.*

Respectfully submitted,

/s/ Harold B. Roitman
HAROLD B. ROITMAN
Attorney for Granite State
Joint Board
T.W.U.A. Local 1029

* As this answer was being submitted the Board granted this motion to reopen dated October 22, 1969.

GENERAL COUNSEL'S EXHIBIT No. 2

June 10, 1969

Local - 1029 TWUA, AFL-CIO
21 High St., Nashua, N.H.

Dear Member:

Greetings:

In September of 1968 Local Union 1029 of the Granite State Joint Board of the Textile Workers Union of America passed a unanimous motion that anyone who engaged in Strike Breaking activities or aided the Company in the Union Strike would be subject to a fine up to \$2000.00. The Company has tried to mislead workers and tried to tell the Union how to conduct its affairs.

However, let us make it clear to everyone that the United States Supreme Court has held that the Union has a right to impose a fine on anyone who has engaged in the Strike Breaking Activities.

It is the duty of the officers to uphold the unanimous resolution of the Local. Charges will be brought against those engaged in Strike Breaking in accordance with the unanimous motion of the Local. It will be no excuse in a hearing on the imposition of a fine to say that you were misled by the Company.

Think carefully before you act on the false promises of the Company. Don't run the risk of being fined up to \$2000.00 for Strike Breaking.

Fraternally,

/s/ Leo D. Simard
LEO D. SIMARD
President

GENERAL COUNSEL'S EXHIBIT No. 3

William Pollock, General President

John Chupka, General Sec'y-Treas.

Thomas J. Pitarys, Joint Board Manager

GRANITE STATE JOINT BOARD

Textile Workers Union of America

Affiliate of the AFL-CIO

[World Emblem]

**814 Elm Street—Suite 420
Manchester, N. H. 03101
Tel. 603—625-8941**

**21 High Street
Nashua, N. H. 03060
Tel. 603—889-1128**

August 4, 1969

**Mr. Roger Bernier
Concord Road
Nashua, N. H. 03060**

Dear Brother Bernier:

Enclosed is a copy of charges against you which is self-explanatory.

In accordance with Article XIII, Sections 2 and 3 of the By-Laws of local No. 1029, TWUA, AFL-CIO, the Executive Board of Local 1029, TWUA is requesting your appearance at a hearing to be held on Friday, August 15, 1969 at the Union Headquarters, 21 High Street, Nashua, N.H., at 7:00 P.M., to offer you the opportunity to answer such charges.

Fraternally,

**/s/ Ralph Boucher
RALPH BOUCHER
Recording Secretary
Local 1029, TWUA, AFL-CIO**

GENERAL COUNSEL'S EXHIBIT No. 8A

August 4, 1969

Mr. Ralph Boucher
Recording Secretary
Local 1029, TWUA, AFL-CIO
21 High Street
Nashua, N.H. 03060

Dear Sir and Brother:

I wish to press charges against Roger Bernier for conduct detrimental to the welfare of Local 1029 and Textile Workers Union of America for aiding and abetting International Paper Box Machine Company during the strike in progress and crossing the picket line during said strike, and strikbreaking.

The above charges in accordance with Article XIII of the By-Laws of Local No. 1029, TWUA, AFL-CIO.

/s/ Maurice [Illegible]
Member, Local 1029
TWUA, AFL-CIO

GENERAL COUNSEL'S EXHIBIT No. 4(1)

Mr. Tom Pitary's

6/6/69

I am resigning from the A. F. of L. C. I. O. Union
Local 1029 as of this date.

ALONZO BEALAND
60 Monroe St.
Nashua, N.H.

GENERAL COUNSEL'S EXHIBIT No. 4(2)

September 19, 1969

Textile Workers of America
Local 1029, Plant IPBMCO
21 High St.
Nashua, N. H. 03060

Dear Sir:

Re: Resignment

I wish to inform you that I am resigning from the
Union, effective this date, September 19, 1969. Please
mark your records accordingly.

Yours truly,

/s/ Marcel Berube
MARCEL BERUBE
108 Linton St.
Nashua, N. H. 03060

GENERAL COUNSEL'S EXHIBIT No. 4(3)**William Pollock, General President****John Chupka, General Sec'y-Treas.****Thomas J. Pitarys, Joint Board Manager****GRANITE STATE JOINT BOARD***Textile Workers Union of America***Affiliate of the AFL-CIO****[World Emblem]****814 Elm Street—Suite 420****Manchester, N. H. 03101****Tel. 603—625-8941****21 High Street****Nashua, N. H. 03060****Tel. 603—889-1128****June 23, 1969****Mr. Jean Boutin****89 South Ave.****Derry, N.H. 03038****Dear Brother Boutin:**

In accordance with the statement you signed to reimburse the Union for the insurance coverage from October, 1968 to June 1969 paid by the Union, we request that the sum of \$220.14 be paid by you, immediately.

This is a written promise you made and we expect you to live up to such promise.

Fraternally,

/s/ **Thomas J. Pitarys**
THOMAS J. PITARYS
Manager

TJP/p

[Postage Stamps]

Granite State Joint Board
Textile Workers Union of Am.
21 High St.
Nashua, N. H. 03060

Return Receipt Requested

CERTIFIED

No. 116414

MAIL

Jean B. Boutin
39 South Ave.
Derry, N. H. 03038

I am Sending my Rasination.

I don't want want to Belong to the union any more.

Return add.
39—South Ave.
Derry, N. H. 03038

Jean B. Boutin
39 South Ave.
Derry, N. H. 03038

I have sending you my resination Buy a Registrad
Letter and you did not send any back.

When you do, then I'l Stat to pay you.

GENERAL COUNSEL'S EXHIBIT No. 4(4)

June 6 1969

To who it may concern,

I am resigning from the union as of June 6 1969.

/s/ Eugene Collard
EUGENE COLLARD

GENERAL COUNSEL'S EXHIBIT No. 4(5)

July 25, 1969

Granite State Joint Board
Textile Workers of America A.F.L., C.I.O.
21 High St.
Nashua, N.H.

Attention: Mr. Tom Pitarys

Dear Tom:

It is with the greatest of regrets, that I am now formally tending my resignation from this Union, of which I have been a member for many long years.

As you all know, I have never been one to keep my mouth shut, if someone twisted my tail. Nevertheless I am genuinely sorry to sever relations in this manner. I would much rather have gone in with a Union, but circumstances force my hand. I cannot afford to fight any longer, what I am convinced is a losing battle.

Some may say I am betraying the Union, but as far as I am concerned, my first duty is to my family.

A man must do, what he must.

Sincerely,

/s/ Robert A. dePontbriand
ROBERT A. DEPONTBRIAND

GENERAL COUNSEL'S EXHIBIT No. 4(6)

Textile Workers Union of America
Granite State Joint Board
Local 1029
21 High Street
Nashua, New Hampshire 03060

Gentlemen:

Please be advised that effective as of Sept. 17th 1969 I hereby submit my resignation as a member of the Machinery Division, Granite State Joint Board, Local 1029, Textile Workers Union of America.

Very truly yours,

/s/ Leo F. DuBois

GENERAL COUNSEL'S EXHIBIT No. 4(7)

June 20, 1969

Local - 1029 TWUA, AFL-CIO
21 High Street
Nashua, New Hampshire 03060

Gentlemen:

The undersigned hereby resigns as a member of the Local Union No. 1029 of the Granite State Joint Board of the Textile Workers Union of America effective as of the date of this letter.

Very truly yours,

/s/ Aurel L. Duval
AUREL DUVAL
23 Walnut Street
Nashua, New Hampshire 03060

Registered Mail—Return Receipt Requested

GENERAL COUNSEL'S EXHIBIT No. 4(8)

June 24, 1969

Nashua, N.H.

Textile Worker's Union of America
21 High Street
Nashua, New Hampshire 03060

Gentlemen:

I, Bernard J. Francis, do hereby resign from Local
1029 AFL-CIO as of this date, June 24, 1969.

Very truly yours,

/s/ Bernard J. Francis
BERNARD J. FRANCIS
12 Dickerman Street
Nashua, New Hampshire

BF:pf

cc: International Paper Box
Machine Company

GENERAL COUNSEL'S EXHIBIT No. 4(9)

June 17, 1969

To:

The Officers of local 1029,

Having lost all faith in Local #1029 T.W.U.A. due to
more reasons than I care to write about, I feel that I
have lost all desire to be represented by this local, and
therefore, I wish to tender my resignation, and to have
it become effective immediately.

Regretfully Yours

/s/ Roger Gagne
14 Rose St.

GENERAL COUNSEL'S EXHIBIT No. 4(10)

Textile Workers Union of America
Granite State Joint Board
Local 1029
21 High Street
Nashua, New Hampshire 03060

Gentlemen:

Please be advised that effective as of Aug. 21, 1969 I hereby submit my resignation as a member of the Machinery Division, Granite State Joint Board, Local 1029, Textile Workers Union of America.

Very truly yours,

/s/ Adrian Gagnon

GENERAL COUNSEL'S EXHIBIT No. 4(11)

39 Vine St.
Nashua, N. H.
July 9, 1969

Dear Sir,

I, Clovis Gamache, as a member of the Granite State Joint Board, textile Workers Union of America AFL-CIO Local 1029, feel that I have been deceived, and received falsified information from the Union resulting in my being on strike for the last 10 months, and have failed to negotiate in good faith for its members.

Therefore I, Clovis R. Gamache do hereby resign from this Union effective this date, July 9, 1969.

Yours truly

/s/ Clovis R. Gamache

GENERAL COUNSEL'S EXHIBIT No. 4(12)**May 9, 1969**

**Textile Workers Union of America
Granite State Joint Board
Local 1029
21 High Street
Nashua, New Hampshire 03060**

Gentlemen:

**Please be advised that effective as of May 12, 1969,
I hereby submit my resignation as a member of the
Machinery Division, Granite State Joint Board, Local
1029, Textile Workers Union of America.**

Very truly yours,

**/s/ Hazen R. Johnson
HAZEN R. JOHNSON**

GENERAL COUNSEL'S EXHIBIT No. 4(13)**11, 25, 68**

**I hear with draw from the Union Local 1029 immedi-
ately, as of this date 11, 25, 68.**

/s/ Maurice K. Kimball, II

GENERAL COUNSEL'S EXHIBIT No. 4(14)

20 Wilder Street
Nashua, N. H.

June 25, 1969

Granite State Joint Board
Textile Workers Union of America
AFL-CIO
21 High Street
Nashua, New Hampshire 03060

Dear Sir:

Please accept this letter as my resignation from Local 1029 of Textile Workers Union of America, AFL-CIO, for reasons too numerous to mention.

Yours truly,

by /s/ Armand Levesque
ARMAND LEVESQUE

AL/j

GENERAL COUNSEL'S EXHIBIT NO. 4(15)

June 12, 1969

Granite State Board
Local - 1029 TWUA, AFL-CIO
21 High St., Nashua, N. H.

Gentlemen:

At the last membership meeting held at the Local 1029, 21 High Street, Nashua, N. H. on May 18, 1969, several members and myself asked the heads of the union, Mr. Daoust, Mr. Pitarys and the union lawyer about IPBM Company's final offer dated April 3, 1969.

At first they did not remember that particular contract, and when they were informed that each employee had received that contract in his mail, the union lawyer stated that **THE COMPANY HAD RETRACTED THAT OFFER**, thus stopping the members from voting to except or reject that contract. Yet, the union states in its big ad . . . strikes should be settled at the bargaining table, in three different paragraphs, that the employees have rejected that proposal of April 3, 1969.

This is an *outrageous lie*. I Peter Makris Sr., find Local 1029 TWUA, AFL-CIO as a deceiving and an unqualified union to negotiate this strike and I also highly resent being threatened. Therefore, on this day June 12, 1969, I hereby resign from this union.

Sincerely,

/s/ Peter Makris Sr.

GENERAL COUNSEL'S EXHIBIT No. 4(16)

June 7, 1969

Dear Sir's

This is to notify you that I, Paul R. Marquis, am hereby resigning as a member of the, Local #1029 Machinery Division, TWUA, AFL CIO, CLC, 21 High St. Nashua N.H. 03060, as of 12:00 midnight June 7, 1969.

Sincerely

/s/ Paul R. Marquis

GENERAL COUNSEL'S EXHIBIT No. 4(17)

Textile Workers Union of America
Granite State Joint Board
Local 1029
21 High Street
Nashua, New Hampshire 03060

Gentlemen:

Please be advised that effective as of 15 August 69 I hereby submit my resignation as a member of the Machinery Division, Granite State Joint Board, Local 1029, Textile Workers Union of America.

Very truly yours,

/s/ Ronald Maynard

GENERAL COUNSEL'S EXHIBIT No. 4(18)

June 23, 1969

Nashua, N. H.

William J. Mayo

Gentleman,

I, William J. Mayo, do hereby resign from Local 1029
AFL CIO as of this date June 23, 1969.

/s/ William J. Mayo

GENERAL COUNSEL'S EXHIBIT No. 4(19)

Reeds Ferry, N. H. 03078

June 28, 1969.

Textile Workers Union of America,
Local No. 1029 AFL-CIO

Gentlemen:

Please accept my resignation from the Textile Workers Union of America, Local 1029, AFL-CIO for reasons too numerous to mention.

Very truly yours,

/s/ Franklyn H. McAllister
R.F.D. #2

Reeds Ferry, N. H. 03078

GENERAL COUNSEL'S EXHIBIT No. 4(20)

July 26, 1969

Textile Workers Union of America
Granite State Joint Board
Local 1029
21 High Street
Nashua, New Hampshire 03060

Gentlemen:

Please be advised that effective as of July 29, 1969 I hereby submit my resignation as a member of the Machinery Division, Granite State Joint Board, Local 1029, Textile Workers Union of America.

Very truly yours,

/s/ Roland Michaud

GENERAL COUNSEL'S EXHIBIT No. 4 (21)

FROM John Nadeau
2nd Poisson Ave.
Nashua, N. H. 08060

[Postage Stamps]

Granite State Joint Board
Textile Workers Union of America, AFL-CIO
21 High Street
Nashua, N. H. 08060

REGISTERED
No. 2784

Monday 23, 1969

Dear Sir

I was a member of Granite State joint Board textile
Workers Union of America AFL CIO Local 1029
I like to resign it its unfair.

I want to go back to the International Paper Box ma-
chine Company.

/s/ John Nadeau

[Post Marks]

GENERAL COUNSEL'S EXHIBIT No. 4(22)

233 Lake St.
Nashua, N. H. 03060

[Postage Stamps]

[Left Notice 11/6/68, A.J.W.]

T W U A
21 Hight St.
Nashua, N. H. 03060

REGISTERED
No. 2267

T.W.U.A.
Local 1029

Return Receipt Requested

This is to notify you as of November 5, 1968 I am
resigning as a member of local 1029 AFL-CIO.

Sincerely yours

/s/ Felix Radziewicz
171
IPBM Co.

[Post Marks]

GENERAL COUNSEL'S EXHIBIT No. 4(23)

Textile Workers Union of America
Granite State Joint Board
Local 1029
21 High Street
Nashua, New Hampshire 03060

Gentlemen:

Please be advised that effective as of August 8, 1969
I hereby submit my resignation as a member of the Ma-
chinery Division, Granite State Joint Board, Local 1029,
Textile Workers Union of America.

Very truly yours,

/s/ Emilien Riendeau

GENERAL COUNSEL'S EXHIBIT No. 4(24)

June 12, 1969

I, the undersigned, resign as of this date from Local 1029—TWUA, AFL-CIO, Nashua, N. H.

/s/ Robert A. Roy
[Address Illegible]

GENERAL COUNSEL'S EXHIBIT No. 4(25)

Textile Workers Union of America
Granite State Joint Board
Local 1029
21 High Street
Nashua, New Hampshire 03060

Gentlemen:

Please be advised that effective as of August 15, 1969 I hereby submit my resignation as a member of the Machinery Division, Granite State Joint Board, Local 1029, Textile Workers Union of America.

Very truly yours,

/s/ Zennie S. Runowicz

GENERAL COUNSEL'S EXHIBIT No. 4(26)

August 16, 1969

**Textile Workers Union of America
Granite State Joint Board
Local 1029
21 High Street
Nashua, New Hampshire 03060**

Gentlemen:

Please be advised that effective as of August 16, 1969 I hereby submit my resignation as a member of the Machinery Division, Granite State Joint Board, Local 1029, Textile Workers Union of America.

Very truly yours,

/s/ Henry Tremblay

GENERAL COUNSEL'S EXHIBIT No. 4(27)

August 1, 1969

Gentlemen:

I Alfred Theriault do hereby resign from Local 1029 AFL-CIO as of this date August 1st 1969.

Very truly yours

/s/ Alfred Theriault

Answer requested.

GENERAL COUNSEL'S EXHIBIT No. 5

Robert D. Guerette
22 Ash St.
Nashua, N. H.

[Postage Stamps]

The International Paper Box Machine Co.
Northeastern Boulevard
Nashua, New Hampshire 03060

Return Receipt Requested
REGISTERED
No. 2929

NOTIFIED
Jun 27 1969

June 26, 1969

The International Paper Box Machine Co.
Northeastern Boulevard
Nashua, New Hampshire 03060

Gentlemen:

Please be advised that affective as of June 26, 1969,
I have submitted my resignation as a member of the
Machinery Division, Granite State Joint Board, Local
1029, Textile Workers Union of America.

Very truly yours,

/s/ Robert D. Guerette

GENERAL COUNSEL'S EXHIBIT No. 8

William Pollock, General President

John Chupka, General Sec'y-Treas.

Thomas J. Pitarys, Joint Board Manager

GRANITE STATE JOINT BOARD

Textile Workers Union of America

Affiliate of the AFL-CIO

[World Emblem]

814 Elm Street—Suite 420

Manchester, N. H. 03101

Tel. 603—625-8941

21 High Street

Nashua, N. H. 03060

Tel. 603—889-1128

August 27, 1969

Mr. Roger Bernier

Concord Road

Nashua, N. H. 03060

Dear Sir and Brother:

Several days ago you were notified by registered letter that you were found guilty and fined by the Executive Board of Local #1029, TWUA for aiding and abetting International Paper Box Machine Co., and strikbreaking activities while a strike is in progress.

As yet, we have not heard from you regarding the payment of the fine.

Unless satisfactory arrangements to pay the fine due the Union is made within the next few days, the Union will proceed with legal action.

Fraternally,

**/s/ Thomas J. Pitarys
THOMAS J. PITARYS
Manager**

TJP/p

GENERAL COUNSEL'S EXHIBIT No. 9

William Pollock, General President

John Chupka, General Sec'y-Treas.

Thomas J. Pitarys, Joint Board Manager

GRANITE STATE JOINT BOARD
Textile Workers Union of America
Affiliate of the AFL-CIO

[World Emblem]

814 Elm Street—Suite 420
Manchester, N. H. 03101
Tel. 603—625-8941

21 High Street
Nashua, N. H. 03060
Tel. 603—889-1128

July 21, 1969

Mr. Alonzo Bealand
60 Monroe Street
Nashua, N. H. 03060

Dear Brother Bealand:

The Executive Board of Local 1029, Textile Workers Union of America, met on Tuesday, July 15, 1969 at the Union Headquarters, 21 High St, Nashua, N.H. to hear testimony relative to charges against you in accordance with Article XIII of the local union by-laws.

You did not choose to appear before the Executive Board to answer such charges.

Testimony presented at the hearing by witnesses was to the effect that you returned to work at International Paper Box Machine Co., by crossing the picket line while the strike is in progress.

Therefore, in accordance with Article XIII of the Local Union by-laws, the Executive Board finds you guilty of crossing the picket lines while a strike is in progress;

aiding and abetting with the company in strikebreaking and conduct detrimental to the welfare of local 1029, Textile Workers Union of America.

The local union Executive Board fines you the equivalent of a day's wages for each day you are employed at International Paper Box Machine Co., while the strike is in progress. Such fines are to be paid immediately.

In the event you have any questions, contact or visit the Union Headquarters.

Fraternally,

/s/ Leo D. Simard
LEO D. SIMARD
President

GENERAL COUNSEL'S EXHIBIT No. 10

THE STATE OF NEW HAMPSHIRE

HILLSBOROUGH, SS. To the sheriff of any county or his deputy:

WE COMMAND YOU to attach the goods or estate of Alonzo Bealand of 60 Monroe Street in Nashua, Hillsborough County, State of New Hampshire, to the value of One Thousand, Six Hundred (\$1600) dollars, and summon him, if to be found in your precinct, to appear at the Superior Court at Manchester in said County of Hillsborough, on the first Tuesday of November, 1969 to answer to Textile Workers Union of America, Local #1029 of 21 High Street in Nashua, County of Hillsborough and State of New Hampshire.

In a plea of

Count I

Money due by the defendant to the plaintiff incurred as a result of his contract of membership in the plaintiff Union

\$1800.00

Count II

Money advanced by the plaintiff on behalf of the defendant at the request of the defendant for payment of insurance premiums

50.16

To the damage to the plaintiff, as he say, the sum of One Thousand, Six Hundred (\$1600) dollars.

WE ALSO COMMAND YOU to attach the money, goods, chattels, rights, and credits of the said _____ in the hands of _____

to the value of _____ dollars, and summon said _____ if to be found in your precinct, to appear at said COURT and show cause, if any he has, why execution should not issue against _____ for the judgment which may be recovered by said plaintiff against said

principal defendant and make return of this writ, with your doings therein.

Witness, John H. Leahy, Esquire, the 4th day of September, A.D. 1969.

CARL O. RANDALL,
Clerk.

A True Copy Attest:

/s/ [Illegible]
Deputy Sheriff

(x) Court
() Jury

SUPERIOR COURT WRIT

TEXTILE WORKERS UNION OF AMERICA, LOCAL #1029

vs.

ALONZO BEALAND

Returnable First Tuesday of November, 1969

TEXTILE WORKERS UNION OF
AMERICA, LOCAL #1029

By Its Attorneys
Green, Romprey, Sullivan &
Beaumont

/s/ By Leonard S. Green
LEONARD S. GREEN
814 Elm Street
Manchester, New Hampshire

A True Copy Attest:

/s/ [Illegible]
Deputy Sheriff

REAL ESTATE ATTACHMENT

Fees:	Register	\$
	Service	
	Copy	
	Travel	_____
		\$

HILLSBOROUGH, SS.

19

I attached all the lands and tenements in the County of _____ in which the within named defendant _____ has any right, title, interest or estate; by leaving at the office of the Register of Deeds of said County, a true copy of this Writ and of this my return endorsed thereon, at _____ minutes past _____ o'clock in the _____ noon of said day.

D. Sheriff

RESPONDENT'S EXHIBIT No. 1**June 16, 1969****Gentlemen,**

As of this date, June 16, 1969, I Leonard Desjardins do hereby resign from Local 1029, for reasons too numerous to mention.

IREMAIN**RESPONDENT'S EXHIBIT No. 2**

**To: Granite State Joint Board
Textile Workers Union of America, AFL-CIO, CLC
21 High Street, Nashua, N.H. 03060**

TO WHOM IT MAY CONCERN:

I, the undersigned, hereby promise to pay Granite State Joint Board, Textile Workers Union of America, AFL-CIO, CLC upon my return to work or upon demand the sum of insurance coverage premiums paid by said Union for the months of October, November, December 1968 and any subsequent payment for insurance coverage the Union may pay in my behalf.

DATE: _____**WITNESS:** _____**SIGNED:** _____

RESPONDENT'S EXHIBIT No. 8

THE INTERNATIONAL PAPER BOX MACHINE COMPANY
Northeastern Boulevard
Nashua, New Hampshire 03060 — (603) 889-6651

June 5, 1969

To the Employees of
The International Paper Box Machine Company

FINALLY THE ISSUE HAS BEEN RESOLVED. EMPLOYEES WHO RESIGN FROM THE UNION ARE NOT SUBJECT TO UNION FINES AND ARE FREE TO CROSS THE PICKET LINE.

Yesterday the Trial Examiner of the National Labor Relations Board issued his decision and recommended an order concerning the complaint against the Union involving the attempt by it to fine Felix Radziewicz and Maurice K. Kimball II for crossing the picket line.

The Trial Examiner found, and we quote his statement that: "I am led to conclude—that Kimball and Radziewicz effectively resigned despite their 'contract of membership' with the Union which forbade their resignation."

Since the Trial Examiner found that Kimball and Radziewicz had effectively resigned from the Union, they are free from any attempt by the union to fine them since they are no longer members. Therefore, the underlying complaint was dismissed. The Trial Examiner pointed to the Union's own statement. He stated: "the Union argues, however, that if Kimball and Radziewicz had in fact resigned, and if the Pitarys letters were a threat, they were nevertheless not coercive within the meaning of Sec. 8 (b) (1) (A) because the obligations of membership, no matter how severe, simply do not apply to non-members."

**TO REPEAT, THIS DECISION MEANS THAT ALL
EMPLOYEES WHO RESIGN FROM THE UNION
ARE NOT SUBJECT TO FINES BY THE UNION,
AND ARE FREE TO CROSS THE PICKET LINE.**

Sincerely,

**THE INTERNATIONAL PAPER
BOX MACHINE COMPANY**

/s/ **Philip D. Labombarde,**
President.

RESPONDENT'S EXHIBIT No. 4

LOCAL UNION #1029
MACHINERY DIVISION, TWUA, AFL-CIO-CLC
Nashua, N.H.

NAME Peter Makris, Sr.

STREET 31 Dane St.

2-1427

CITY Nashua

STATE N. H.

AGE 53

MARRIED Yes SINGLE _____ OTHER _____

NO. DEPENDENTS 1

AGE 51

NO. EMPLOYED IN FAMILY 1

UNION MEMBER YES Yes NO _____

JOB IN PLANT Yes

YEARS EMPLOYED 20

SUPREME COURT OF THE UNITED STATES

No. 71-711

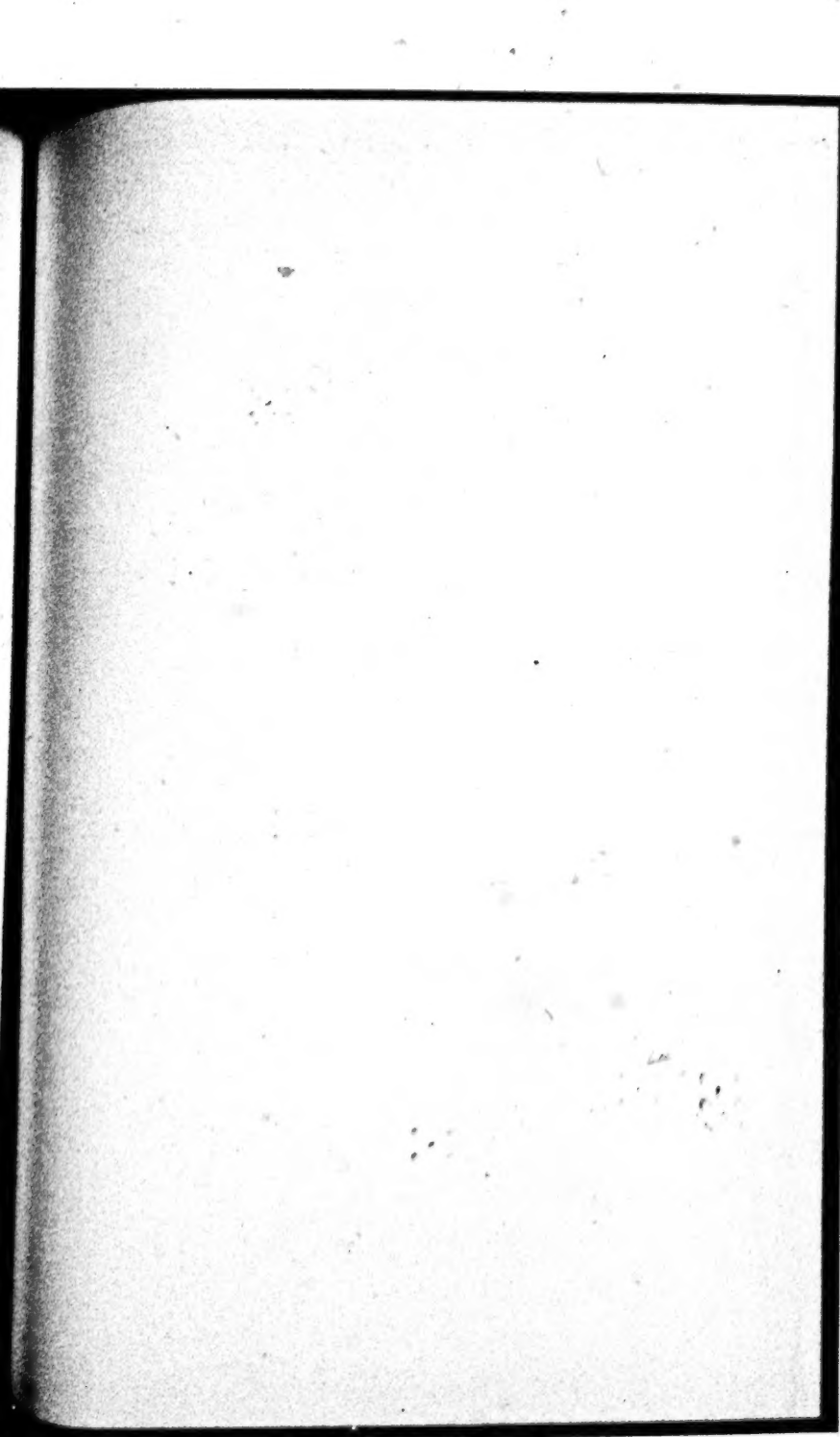
NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

**GRANITE STATE JOINT BOARD, TEXTILE WORKERS
UNION OF AMERICA, LOCAL 1029, AFL-CIO**

ORDER ALLOWING CERTIORARI—Filed March 20, 1972

The petition herein for a writ of certiorari to the United States Court of Appeals for the First Circuit is granted.



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In the Supreme Court of the United States

OCTOBER TERM, 1971

No. —

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

**GRANITE STATE JOINT BOARD, TEXTILE WORKERS UNION
OF AMERICA, LOCAL 1029, AFL-CIO**

**PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE FIRST CIRCUIT**

The Solicitor General, on behalf of the National Labor Relations Board, petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the First Circuit in this case.

OPINIONS BELOW

The opinion of the court of appeals (App. A, *infra*, pp. 1a-11a) is reported at 446 F. 2d 369. The decision and order of the National Labor Relations Board (App. C, *infra*, pp. 13a-19a) are reported at 187 NLRB No. 90.

JURISDICTION

The judgment of the court of appeals (App. B, *infra*, p. 12a) was entered on June 29, 1971. On September 20, 1971, Mr. Justice Brennan extended the

time for filing a petition for a writ of certiorari to and including November 26, 1971. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether a union violates Section 8(b)(1)(A) of the National Labor Relations Act by fining employees who resigned from union membership and then returned to work during a lawful union-authorized strike, and by seeking judicial enforcement of the fines.

STATUTES INVOLVED

The relevant provisions of the National Labor Relations Act, as amended (61 Stat. 136, 73 Stat. 519, 29 U.S.C. 151, *et seq.*) are as follows:

Sec. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities * * *

Sec. 8(b) It shall be an unfair labor practice for a labor organization or its agents—

(1) to restrain or coerce (A) employees in the exercise of the rights guaranteed in section 7: *Provided, That* this paragraph shall not impair the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership therein * * *

STATEMENT

A. THE BOARD'S FINDINGS OF FACT

On September 20, 1965, the Company¹ and the Union,² which represents the Company's production and maintenance employees, executed a collective bargaining agreement for a three-year term. The agreement contained a maintenance-of-membership clause providing that employees who were union members when the contract was executed, or who joined the Union during the contract term, were, as a condition of continued employment, to remain members in good standing "as to payment of dues" for the duration of the contract (A. 6-7; 39, 91).³ Neither the contract nor the Union's constitution contained any provision defining or limiting the circumstances under which a member could resign from the Union (A. 7-8, 23; 57-59, 77, 96-98).

On September 14, 1968, six days before the scheduled expiration of the collective bargaining agreement, the union membership voted to strike if no agreement was reached by September 20. No agreement was reached, and the strike, with attendant picketing, began on that day (A. 4-5; 42, 48).⁴ On September 21,

¹ International Paper Box Machine Company.

² Granite State Joint Board, Textile Workers Union of America, AFL-CIO.

³ "A." refers to the joint appendix in the court of appeals, a copy of which has been filed with the Clerk.

⁴ All of the approximately 160 union members in the unit went out on strike. The plant remained open, but only supervisors, clerical, office, and technical employees, and the 3 or 4 employees in the unit who were not union members worked (App. C, *infra*, p. 22a).

the Union held a meeting to discuss strike organization, at which the membership approved a resolution that anyone aiding or abetting the Company during the strike would be subject to a \$2000 fine (A. 5; 41, 48, 92).*

On November 5 and 25, respectively, employees Felix Radziewicz and Maurice Kimball mailed to the Union letters of resignation from union membership. The Union wrote each employee, in reply, that it considered their purported resignations to be ineffective, and that they would be subject to a fine of \$2000 if they crossed the picket line (A. 5-6; 49, 93-95, 119, 126). Despite the warning, both employees returned to work. Beginning about 7 months later and during the period from May 9 to September 19, 1969, 29 other employees also resigned from the Union and returned to work (A. 21, 63-64, 88, 111-130).

After the 31 employees returned to work, the Union sent each a letter charging him with misconduct by crossing its picket line, and requesting him to appear at a hearing at a specified time to answer the charge (A. 21; 88, 109-110). None appeared. The Union tried the 31 employees *in absentia*, and then notified each employee that he had been found guilty and had been fined the equivalent of a day's wages for each day worked during the strike, the fines being payable im-

* Most of the members, including the employees involved here, attended both the September 14 and the September 21 meetings. The members assented to the strike by a standing vote, with only one member dissenting. The motion to levy the fine was adopted unanimously without debate. (A. 5; 40-41, 48-49.)

mediately (A. 21; 88, 132). Later, the Union sent each employee a letter threatening legal action to collect the fine (A. 21; 131). When none of the employees paid, the Union filed suits in a New Hampshire state court to collect the fines (A. 21-22; 88, 133-144). The employees, in turn, filed unfair labor practice charges with the Board.*

B. THE BOARD'S DECISION AND ORDER

The Board concluded that the 31 employees had effectively resigned from the Union before returning to work, and that the Union violated Section 8(b)(1)(A) of the Act by fining them and seeking judicial enforcement of the fines (App. C, *infra*, pp. 13a-19a). The Board relied upon its earlier decision in *Booster Lodge No. 405, IAM (The Boeing Company)*, 185 NLRB No. 23 (1970) (App. D, *infra*, pp. 55a-70a). There, the Board held that the Union's right to fine a member for crossing a picket line during a strike recognized in *National Labor Relations Board v. Allis-Chalmers Mfg. Co.*, 388 U.S. 175, is extinguished by the member's effective resignation from the Union before crossing the line. The Board reasoned (App. D, *infra* pp. 61a-62a):

In joining a union, the individual member becomes a party to a contract-constitution. Without waiving his Section 7 right to refrain from concerted activities, he consents to the possible imposition of union discipline upon his exercise of that right. But the contract between the

*The state court suits are being held in abeyance pending the outcome of the Board proceeding.

member and the union becomes a nullity upon his resignation. Both the member's duty of fidelity to the union and the union's corresponding right to discipline him for breach of that duty are extinguished. [Footnote omitted.]

The Board ordered the Union, *inter alia*, to rescind the fines and to withdraw the state court suits (App. C, *infra*, p. 16a, 17a, 49a-51a).

C. THE COURT OF APPEALS' DECISION

The court of appeals denied enforcement of the Board's order. The court acknowledged that neither the Union constitution nor the expired collective agreement precluded the employees from resigning from the Union when they did. It accepted, however, the Union's contention that "even if the resignations effectively severed ties with the union for most purposes, the September 1968 strike vote bound these thirty-one employees to support this particular strike until its conclusion" (App. A, *infra*, p. 6a). The court reasoned that, "although § 7 gives an employee the right to refuse to undertake and involve himself in union activities, it does not necessarily give him the right to abandon these activities in midcourse once he has undertaken them voluntarily" (App. A, *infra*, p. 8a). The court concluded (App. A, *infra*, pp. 8a-9a):

[T]he policy of allowing unions to maintain strike discipline [recognized in *Allis-Chalmers*, *supra*] can be reconciled with the policy of allowing employees to refrain from concerted activities if the Act is interpreted to permit the waiver of § 7 rights by employees. Under this interpretation, employees who agreed to under-

7
take specific union activities and obligations would be held to have waived their § 7 rights to refrain from those activities. [Footnote omitted.]

REASONS FOR GRANTING THE WRIT

The question whether a union may assess a fine against a former union member for returning to work after resigning from the union during a union-authorized strike, and may seek judicial enforcement of the fine, is an important and recurrent issue in the administration of the Act. The holding of the court of appeals that the employee's acquiescence in the initial strike authorization bars him from resigning from the union and returning to work seriously impairs the employee's right under Section 7 to refrain from participating in and assisting union activities. Review by this Court is thus warranted.

1. In *National Labor Relations Board v. Allis-Chalmers Mfg. Co.*, 388 U.S. 175, the Court held that a union did not violate Section 8(b)(1)(A) of the Act by fining members who went to work during a lawful strike authorized by the membership, and by seeking to enforce the fines through court suit. The Court noted that the proponents of Section 8(b)(1)(A) repeatedly had stated during congressional consideration of the provision that there was no intent to interfere with the internal affairs of unions. It also noted that "[p]rovisions in union constitutions and bylaws for fines and expulsion of recalcitrants, including strikebreakers, . . . were commonplace at the time of the Taft-Hartley amendments." 388 U.S. at 181-182.

These two factors, it concluded, showed that Congress had not intended to deprive unions of the power to punish strikebreaking members when it forbade unions to "restrain and coerce" workers in the exercise of their Section 7 rights "to refrain from any or all [union] . . . activities . . ." In upholding judicial enforcement of the fines, the Court observed that "Congress was operating within the context of the 'contract theory' of the union member relationship . . ." and the usual way to enforce a contract is in court (388 U.S. at 192). In *Seaboard v. National Labor Relations Board*, 394 U.S. 423, the Court held that a union did not violate Section 8(b)(1)(A) by fining members who exceeded a production quota established by union rule but acquiesced in by the employer. The Court reasoned that "§ 8(b)(1) leaves a union free to enforce a properly adopted rule which reflects a legitimate union interest, impairs no policy Congress has imbedded in the labor laws, and is reasonably enforced against union members who are free to leave the union and escape the rule." *Id.* at 430, emphasis supplied.

These decisions indicate that, in applying Section 8(b)(1)(A), the Board is required to make an accommodation between the right of the union "to protect

The court added: "If a member chooses not to engage in this concerted activity and is unable to prevail on the other members to change the rule, then he may leave the union and obtain whatever benefits in job advancement and extra pay may result from extra work, at the same time enjoying the protection from competition, the high piece rate, and the job security which compliance with the union rule by union members tends to promote." 394 U.S. at 435.

against erosion its status [as exclusive bargaining representative] through reasonable discipline of members who violate rules and regulations governing membership" (*Allis-Chalmers, supra*, 388 U.S. at 181), and the right of employees, conferred by Section 7, "to refrain from" engaging in union activity. They further indicate that the union's right of discipline flows from the fact that, in joining the union, the member agrees to abide by lawful union rules and policies, and that a member may escape the discipline by leaving the union.

The very fact that a worker gives up so much freedom of action by joining a union (*Allis-Chalmers, supra*, 388 U.S. at 180) supports the conclusion of *Scofield, supra*, that he must ultimately have the right to leave the union if he finds some aspect of its regulations intolerable. In this case the union's constitution and bylaws contained no restriction of members' rights to resign and the retention of membership provision of the collective bargaining agreement had expired with the agreement (App. A, *infra*, p. 5a). The Board was reasonable in concluding that the members had a right to resign from the union and that the union's right of discipline was coterminous with the union-member relationship.*

2. The court of appeals did not decide whether Section 7 afforded the workers a right to resign their membership and return to work, because it

* In *Boeing, supra*, the Board found that the union did not violate Section 8(b)(1)(A) by fining former members who had contravened the union policy prior to their resignation from the union. App. D, *infra*, pp. 64a-66a.

found that they had "waived" their Section 7 rights in voting to strike (App. A, *infra*, pp. 8a-9a). The court of appeals "waiver" theory imposes a cost upon a member's prior support of the union's policy far beyond anything contemplated at the time the member gave the support. While a member's support of any rule or policy, such as increased dues or assessments, may be viewed as a waiver of any right to oppose the rule, it can hardly be viewed as a commitment to remain a member or support the rule (e.g., pay dues) after he has resigned. Support at one time of a particular union project should not be construed in derogation of Section 7 rights, so as to commit a member irrevocably to union membership or to support of the policy once he has left the union.

The qualification of Section 7 rights announced by the court of appeals—that a vote for a strike bars the right to resign from the union and abandon that policy—seriously curtails the employees' Section 7 right to refrain from engaging in union activity, and introduces a factor which often cannot be established.

While an employee may be sympathetic to a strike when the vote is taken, events occurring thereafter—such as the hardship to his family or the employer's ability to hire permanent replacements for the

*The court noted that, "[s]ubstantive express provision to the contrary, the courts have interpreted union constitutions to allow voluntary resignations at any time." Similarly, "since the collective bargaining agreement had expired, the 'retention of membership' provision was no longer in effect during the strike." (App. A, *infra*, p. 5a).

strikers may lead him to change his mind about the strike and to desire to return to work. Under the Board's view of the proper balance between the rights of the union and those of the employee, Section 7 gives the employee the right to make this change without running the risk of union discipline, provided that he is willing effectively to resign from the union before abandoning the strike. The decision of the court of appeals, on the other hand, would deprive the employee, once he voted for the strike, of the freedom to change his mind in the light of ensuing events; he would be bound to support the strike to its conclusion, irrespective of the hardship which this course would impose on him."

Moreover, the attempt to ascertain whether an employee originally voted for a strike will be difficult, if not impossible. Where, as here, the employees voted openly, it is not always clear how many employees voted and how," and to take testimony on this issue,

Here, the first two strikers to resign from the Union did so 14 to 2 months after the strike had begun. The other 29 did so 7 1/2 to 12 months after its commencement (A. 45, 71, 90, 93, 111-130).

The court below noted that the "only direct evidence on the record before us is the testimony of Maurice Kimball II, who was the second employee to resign"; he "testified that he had voted for the strike and that he was present at the meeting when the fine was voted, and did not oppose it" (App. A, *infra*, p. 3a, n. 3). The court added that, "[s]ince the record is somewhat equivocal on this point, * * * it is conceivable that one or more employees will yet come to the Board with the claim that they did not attend either of the two strike meetings" (App. A, *infra*, p. 10a, n. 8).

long after the event, would be of little probative value. *Cf. National Labor Relations Board v. Gissel*, 395 U.S. 575, 608. On the other hand, where the strike vote is by secret ballot, as many are, a probe as to how the employees voted, although possible, would impair the secrecy of the ballot.

Finally, the holding of the court below substitutes the court's judgment for the Board's as to how the competing interests of the union and the employees should be accommodated. By thus usurping the Board's "function of striking that [delicate] balance to effectuate national labor policy [which] is often a difficult and delicate responsibility" (*National Labor Relations Board v. Truck Drivers Union*, 353 U.S. 87, 96), the court below has exceeded its limited reviewing authority and has encroached upon a function Congress committed to the Board.

3. The importance of the issue is attested by the fact that there are two other enforcement proceedings pending involving this question. *Booster Lodge No. 405, IAM v. National Labor Relations Board*, Nos. 26847 and 24744 (C.A. D.C.), argued September 15, 1971; *Local 1285, IAM v. National Labor Relations Board*, No. 71-1578 (C.A. 5), argued November 15, 1971. The present case squarely presents the issue, and in view of its importance in the Administration of the Act, there is no occasion to await the possible conflict between circuits that could arise as a result of the forthcoming decisions in the pending cases.

CONCLUSION

The petition for a writ of certiorari should be granted.
Respectfully submitted.

ERWIN N. GRISWOLD,
Solicitor General.

PETER G. NASH,
General Counsel,

NORTON J. COME,
Assistant General Counsel,

WARREN M. DAVISON,
Deputy Assistant General Counsel,

STANLEY R. ZIRKIN,
Attorney,

National Labor Relations Board.

NOVEMBER 1971.

The petition for a writ of certiorari should be granted.
Respectfully submitted,

THOMAS N. GRIFFIN,
Solicitor General.

PETER G. NASH,
General Counsel,
Norton J. Come,
Assistant General Counsel,
William M. Davison,
Deputy Assistant General Counsel,
Stanley R. Zimm,
Attorney General,
National Labor Relations Board.
November 1971.

Enclosed for the National Labor Relations Board are two copies of a letterhead memorandum dated and captioned as above. The memorandum contains a summary of the facts and issues presented by the petition for a writ of certiorari filed in the United States Supreme Court on October 15, 1971, and a recommendation that the petition be granted. The memorandum also contains a copy of the petition for a writ of certiorari and a copy of the order of the Supreme Court granting the petition. The memorandum is being submitted to the Board for its information and for its recommendation on whether to grant the petition.

APPENDIX A

In the United States Court of Appeals

for the First Circuit

No. 71-1063

NATIONAL LABOR RELATIONS BOARD, PETITIONER

GRANITE STATE JOINT BOARD, TEXTILE WORKERS UNION OF AMERICA, LOCAL 1029, AFL-CIO, RESPONDENT

ON APPLICATION FOR ENFORCEMENT OF AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD

Before ALDRICH, Chief Judge,
McENTEE and COFFIN, Circuit Judges.

June 29, 1971.

McENTEE, Circuit Judge. This case comes to us on application for enforcement of a Labor Board order against respondent, Granite State Joint Board, Textile Workers Union of America, Local 1029, AFL-CIO (the union). The Board found that the union committed a § 8(b)(1)(A) unfair labor practice¹

¹ Section 8(b) provides in relevant part:

"It shall be an unfair labor practice for a labor organization or its agents—

"(1) to restrain or coerce (A) employees in the exercise of

when it sought judicial enforcement of fines against thirty-one union members who, during the course of a lawful, union-authorized strike, resigned from the union and crossed the picket line to return to work.

The union represents the production and maintenance employees of the International Paper Box Machine Company in Nashua, New Hampshire. The collective bargaining agreement which was in effect between September 20, 1965, and September 20, 1968, included a "maintenance of membership clause," which provided that all employees who belonged to the union on September 20, 1965, or joined during the contract period would remain members in good standing for the duration of the contract. Each employee applying for union membership was required to sign a "dues check-off" authorization form. This form expressly made the check-off authorization irrevocable except during specified annual ten-day periods.

Shortly before the expiration of the collective bargaining agreement, while negotiations were still in progress, the union membership voted to strike if no agreement was reached by September 20. The trial examined the rights guaranteed in section 7 of this title: *Provided*, That this paragraph shall not impair the right of the labor organization to prescribe its own rules with respect to the acquisition or retention of membership therein;...."

Section 7 provides:

"Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such rights may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 8(a)(3) of this title." (Emphasis added.)

aminer found that "[p]ractically all the members" attended the strike vote meeting and only one member dissented from the decision to strike. A day or two after the strike began the union membership voted unanimously to levy a \$2,000 fine on anyone aiding or abetting the company during the strike.

On November 5 and 25, 1968, respectively, employees Radziewicz and Kimball sent letters of resignation to the union. In both instances the union refused to accept the tendered resignations and warned the employees about the \$2,000 fine. Radziewicz returned to work secretly for a few days before Thanksgiving but stopped working after receiving a second warning about the fine. The two employees then filed unfair labor practice charges against the union on the ground that the threats of fines violated § 8(b) (1) (A). The trial examiner ruled that no unfair labor practice had been committed. He added, however, that in his opinion, although *NLRB v. Allis-Chalmers Manufacturing Co.*, 388 U.S. 175 (1967), established a union's right to obtain judicial enforcement of fines levied against members who cross a picket line, Radziewicz and Kimball could not be fined under *Allis-Chalmers* because they had effectively resigned from union membership. The company thereupon informed all striking employees about the trial examiner's decision. The union, in turn, wrote to each member that

This finding suggests that most of the employees who subsequently resigned and returned to work had probably voted in favor of the strike and very likely for the fines as well. The Board conceded at oral argument that all thirty-one had voted to strike. The only direct evidence on the record before us is the testimony of Maurice Kimball II, who was the second employee to resign. He testified that he had voted for the strike and that he was present at the meeting when the fine was voted, and did not oppose it.

the company's information was erroneous and that the union's right to fine strikebreakers has been upheld by the Supreme Court. During the months that followed, twenty-nine additional employees resigned from the union and returned to work.

Each of the thirty-one employees who returned to work was tried at a union hearing and fined an amount equal to a day's pay for each day worked during the strike. All received notices regarding their hearings, but none attended and none paid the fine. The union then commenced actions to collect the fines in the New Hampshire state courts. While these actions were pending, the instant unfair labor practice charges were filed. In conformance with his earlier opinion, the trial examiner ruled that, because these employees had effectively resigned from the union before crossing the picket line, the union fines and attempted judicial enforcement violated their §7 right to refrain from striking and constituted a §8(b)(1)(A) unfair labor practice. The Board affirmed his rulings, relying on its more extensive opinion in *Booster Lodge No. 405, IAM*, 185 N.L.R.B. No. 23 (1970) (*Boeing*), review pending, No. 24,687 (D.C. Cir.), which it had recently issued. *Boeing* and the instant case are the only two in which the Board has ruled on this question and

*As the trial examiner noted, *Allis-Chalmers, supra*, does not make clear whether an unreasonably severe union fine would constitute a §8(b)(1)(A) unfair labor practice. Since the Board's ruling below is not predicated on reasonableness, we need not reach that issue here.

*The trial examiner also ruled that state court suits brought by the union to recover money advanced to these employees during the strike did not violate §8(b)(1)(A). In many instances the union had paid premiums to keep employees' group life insurance policies current during the strike, and some had received direct cash payments from the union.

this is therefore a case of first impression before this court.

In its brief, the union takes the position that these thirty-one employees have never effectively resigned. First, it argues that questions of "acquisition and retention of membership" are internal union matters and therefore beyond the province of the Board, citing the proviso in § 8(b)(1)(A), note 1 *supra*, and *UAW, Local 283*, 145 N.L.R.B. 1097 (1964) (*Wisconsin Motor Corp.*), review denied sub nom. *Scofield v. NLRB*, 393 F. 2d 49 (7th Cir. 1968), *aff'd*, 394 U.S. 423 (1969). But the general principle that the union-employee relationship is a "federally unentered enclave" does not apply where a union "rule or its enforcement impinges on some policy of the federal labor law." *Scofield, supra*, 394 U.S. at 426 n.3. Since § 8(b)(1)(A) makes certain actions taken by unions *vis-a-vis* their employees unfair labor practices, it is within the province of the Labor Board and the federal courts to determine when that provision has been violated.

The union concedes that its constitution and by-laws contain no express provision limiting members' rights to resign. Absent an express provision to the contrary, the courts have interpreted union constitutions to allow voluntary resignations at any time. *NLRB v. Mechanical and Allied Production Workers, Local 444*, 427 F. 2d 883 (1st Cir. 1970); *Communication Workers v. NLRB*, 215 F. 2d 835, 838-39 (2d Cir. 1954); *cf. NLRB v. International Union, UAW*, 320 F. 2d 12 (1st Cir. 1963) (*Paulding*). Similarly, since the collective bargaining agreement had expired, the "retention of membership" provision was no longer in effect during the strike. The union argues that its established practice was to accept resignations only during the annual ten-day "escape period" during

which employees were allowed to revoke their "dues check-off" authorizations. But, as the trial examiner pointed out, there was no evidence that the employees knew of this practice or that they had consented to this limitation on their right to resign.

The union contends that, even if the resignations effectively severed ties with the union for most purposes, the September 1968 strike vote bound these thirty-one employees to support this particular strike until its conclusion. An analogy is drawn to the "charitable subscription" cases where some courts have held that a promise by A to donate funds to a charity is binding on A if others have made similar promises in reliance on his promise. *E.g.*, *Young Men's Christian Association v. Estill*, 140 Ga. 291, 78 S.E. 1075 (1913). See 1A A. Corbin, Contracts § 198, at 210 (1963). As Corbin points out, the "mutual subscriptions" argument is particularly compelling in a business context where donative intent is presumably absent. *Id.* at 212; see *Martin v. Meles*, 179 Mass. 114, 60 N.E. 397 (1901) (Holmes, C.J.). We can imagine a case involving three hypothetical employees whom we shall call Jones, Smith and Parks. Initially, Jones is anxious to strike but Smith and Parks hesitate, finally acquiescing on the condition that all agree to stick it out for the duration of the strike. We suggest

Under this theory, the *Boeing* case, *supra*, may be distinguishable on its facts since in *Boeing* the fines were authorized by a general provision in a union constitution, rather than by a specific decision of the membership adopted in the context of a particular strike. In *Boeing* the Board emphasized that "the Union had not warned members about the possible imposition of disciplinary measures." Also, the *Boeing* opinion did not consider whether any of the employees who crossed the picket line had originally voted to support the strike. We express no opinion, however, as to whether these distinctions are determinative.

that this kind of mutual reliance is implicit in all strike votes; many employees would hesitate to forego several weeks or months of pay if they knew their co-workers were free to cross the picket line at any time merely by resigning from the union. An alternative theory, also suggested by the subscription cases, is that the union can enforce an employee's agreement to strike since it has embarked on the strike in reliance on his promise to honor it.

In response, the Board concedes that the mutual subscription argument would be conclusive but for § 7 of the Act. See note 1 *supra*. Section 7, which was originally designed to assure employees the right to organize, bargain collectively, and engage in concerted activities, was amended by the Taft-Hartley Act in 1947 to give employees the added right "to refrain from any or all of such activities. . . ." We are not persuaded, however, that the amendment to § 7 was intended to authorize mid-strike resignations. The plain meaning of the word "refrain" is "to keep oneself from doing, feeling, or indulging in something." It is synonymous with "abstain" and "forbear." Webster's Seventh New Collegiate Dictionary 220 (1967). This definition suggests that, although § 7 gives an employee the right to refuse to undertake and involve himself in union activities, it does not necessarily give him the right to abandon these activities in midcourse once he has undertaken them voluntarily. There is little legislative history regarding the amendment to § 7, but the conference committee re-

It could be argued that the union's reliance on the "subscription cases" is inconsistent with its concession at oral argument that a majority vote of the membership could terminate the strike at any time. But it would seem to have been implicit in the original strike vote that the obligation to strike would terminate once the majority voted to return to work.

port supports our interpretation. It states that the amendment provides that employees are also to have the right to refrain from joining in concerted activities with their fellow employees if they choose to do so. H. R. Rep. No. 510, 80th Cong., 1st Sess.; 1947 U.S. Code Cong. Service, p. 1145. (Emphasis added.)

The union argues that the employee who agrees to strike should be likened to a volunteer for military service who, once he has enlisted, is no longer free to resign from his obligations and duties in midpassage. This approach receives strong support from *Allis-Chalmers*, *supra*, where the Court said:

Integral to this federal labor policy has been the power in the chosen union to protect against erosion its status under that policy through reasonable discipline of members who violate rules and regulations governing membership. That power is particularly vital when the members engage in strikes. The economic strike against the employer is the ultimate weapon in labor's arsenal for achieving agreement under its terms, and "[t]he power to fine or expel strikebreakers is essential if the union is to be an effective bargaining agent *Supra*, 368 U.S. at 181. (Emphasis added; footnotes omitted.)

The Board asserts that, in essence, this case presents a conflict between the policies set forth in *Allis-Chalmers* and those incorporated in the amended § 7. The Board takes the position that, where such a conflict exists, § 7 must prevail. But the policy of allowing unions to maintain strike discipline can be reconciled with the policy of allowing employees to refrain from concerted activities if the Act is interpreted to permit the waiver of § 7 rights by employees. Under this interpretation, employees who agreed to undertake specific union activities and obligations would be

held to have waived their § 7 rights to refrain from those activities.' As noted, both the plain meaning and the legislative history of the amendment to § 7 support this interpretation.

We find further support for our decision not to enforce the Board's order in this case in the reasoning in *Allis-Chalmers, supra*. In that case the Court never reached the question of the proper interpretation of § 7, because it held that § 8(b)(1)(A) simply does not apply to judicial enforcement of union strikebreaking fines. The Court emphasized that Taft-Hartley was enacted in a context in which the union-member relationship was considered a matter of private contract, governed by state law. *Id.*, 388 U.S. at 182-83. It stated that § 8(b)(1)(A) was intended to affect that relationship in only three areas: (1) coercion and threats of reprisal in the course of organizational campaigns, *id.* at 186-88; (2) arbitrary actions by union leaders, *id.* at 188-89; and (3) "coercion which prevented employees not involved in a labor dispute from going to work," *id.* at 189. There is no evidence in the legislative history of any intent that § 8(b)(1)(A) apply to union-employee agreements and obligations that have been undertaken voluntarily and without coercion.

¹ As the dissent noted in *Allis-Chalmers*, there is some suggestion in the Court's opinion in that case that "by joining a union an employee gives up or waives some of his § 7 rights." *Supra*, 388 U.S. at 200 (Black, J., dissenting). In the *Boeing* opinion, the Board said that, when an employee joins a union, "[w]ithout waiving his Section 7 right to refrain from concerted activities, he consents to the possible imposition of union discipline upon his exercise of that right." That proposition strikes us as "doublethink." Consent to imposition of a sanction is obviously equivalent to the waiver of a right. We therefore conclude that § 7 rights can be and are waived by employees in many situations.

In *Boeing* the Board took the position that *Allis-Chalmers* has been limited by *NLRB v. Industrial Union of Marine & Shipbuilding Workers*, 391 U.S. 418 (1968), and *Scofield v. NLRB*, *supra*, 394 U.S. 423. *Scofield* held that a union rule is valid unless that "rule invades or frustrates an overriding policy of the labor laws." *Id.*, 394 U.S. at 429. Since we have found a valid waiver of § 7 by these employees,^{*} we conclude that no federal labor policy would be overridden by judicial enforcement of union fines in the context of this case. The Board relies on dictum in *Scofield* to the effect that

§ 8(b)(1) leaves a union free to enforce a properly adopted rule which reflects a legitimate union interest, impairs no policy Congress has imbedded in the labor laws, and is reasonably enforced against union members who are free to leave the union and escape the rule." *Id.*, 394 U.S. at 430.

We do not understand this language to mean that union members must be "free to leave the union and escape the rule" at any time and under all circumstances. Indeed, we do not see how that interpretation could be correct since in *Scofield* itself the Court recognized that a valid union security clause was in effect at the time of the alleged unfair labor practice. *Id.*, 394 U.S. at 424 n. 1. The extent to which and the

^{*} Since the record is somewhat equivocal on this point, *cf.* note 2 *supra*, it is conceivable that one or more employees will yet come to the Board with the claim that they did not attend either of the two strike vote meetings. We do not reach the question of whether employees in that position were free to abandon the strike at any time, whether their failure to resign at the beginning of the strike constituted ratification of the strike vote on their part, or whether their voluntary act in joining the union constituted such a "contract" as to bar such a claim.

conditions under which union members must be free to resign has not been definitely resolved by the Court. In light of our analysis of the specific obligation to strike undertaken in this case, it is an issue we need not reach here.

The petition for enforcement is denied.

APPENDIX B
In the United States Court of Appeals for the First
Circuit

No. 71-1063

NATIONAL LABOR RELATIONS BOARD, PETITIONER,

v.

GRANITE STATE JOINT BOARD, TEXTILE WORKERS UNION
OF AMERICA, LOCAL 1029, AFL-CIO RESPONDENT

DECREE

Entered June 29, 1971

This cause came on to be heard upon petition for enforcement of an order of the National Labor Relations Board, and was argued by counsel.

Upon consideration whereof, It is now here ordered, adjudged and decreed as follows: The petition for enforcement is denied.

By the Court:

/s/ **DANA H. GALLUP,**

Clerk.

A True Copy

ATTEST:

DANA H. GALLUP, Clerk.

[Cert. cc: N.L.R.B.; cc: Messrs. Mallet-Prevost and Roitman and Mr. Fuchs.]

APPENDIX C

United States of America—Before the National Labor Relations Board

GRANITE STATE JOINT BOARD, TEXTILE WORKERS UNION
OF AMERICA, LOCAL 1029, AFL-CIO¹ (INTERNA-
TIONAL PAPER BOX MACHINE COMPANY)

and

FELIX RADZIEWICZ, MAURICE K. KIMBALL, II,
INDIVIDUALS

Case 1-CB-1460 (1-2)

and

PAUL R. MARQUIS, EUGENE COLLARD, HAZEN R.
JOHNSON, PETER MAKIS, SR., INDIVIDUALS

Case 1-CB-1504 (1-4)

and

JOSEPH M. KERRIGAN, ESQ., AN INDIVIDUAL

Case 1-CB-1534

DECISION AND ORDER

On June 4, 1969, Trial Examiner Milton Janus issued his Decision in the above-entitled Case 1-CB-1460 (1-2), finding that the Respondent had not engaged in certain unfair labor practices within the

¹ Herein called the Union or the Respondent.

meaning of the National Labor Relations Act, as amended, and recommending that the complaint be dismissed in its entirety, as set forth in the attached Trial Examiner's Decision. Thereafter, the General Counsel filed exceptions to the Trial Examiner's Decision and a brief in support thereof. The Respondent filed an answering brief.

On July 3, 1969, the General Counsel filed a motion with the Board to reopen the record in Case 1-CB-1460 (1-2), alleging that the Union had undertaken to implement its threat to fine the Charging Parties, which the Trial Examiner found was not violative of the Act, by filing formal charges against Radziewicz and Kimball for crossing its picket line at their place of employment at International Paper Box Machine Company (herein called the Company). The Respondent filed a brief in opposition to the General Counsel's motion. On October 22, 1969, the Board issued an Order granting the General Counsel's motion to reopen the record and remanded the proceeding to the Trial Examiner "... for the purpose of permitting the parties to present evidence of conduct occurring after the close of the hearing and bearing directly upon the conduct alleged in the complaint."

In the interim, on June 24 and September 3, 1969, charges were filed against the Union in Case 1-CB-1504(1-4) and Case 1-CB-1534, on the basis of which a consolidated complaint, with notice of hearing, was issued against the Union on October 20, 1969. The complaint alleged that the Union violated Section 8(b)(1)(A) of the Act by threatening to fine, imposing fines, and seeking judicial enforcement of such fines against certain named employees of the Company who had resigned from the Union and had returned to work during the Union's strike against the Company. On November 10, 1969, pursuant to motion made by

the General Counsel, the Trial Examiner consolidated all these cases and, on November 20, 1969, conducted a hearing in the entire consolidated proceeding.

On April 8, 1970, Trial Examiner Milton Janus issued his Supplemental Decision in the above-entitled proceeding, finding that the Respondent had engaged in and was engaging in certain unfair labor practices within the meaning of the National Labor Relations Act, as amended, and recommending that it cease and desist therefrom as set forth in the attached Trial Examiner's Supplemental Decision. Thereafter, the Respondent filed exceptions to the Trial Examiner's Supplemental Decision and a brief in support thereof.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its powers in connection with this case to a three-member panel.

The Board has reviewed the rulings of the Trial Examiner made at the hearings and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Trial Examiner's Decision, the exceptions and briefs, and the entire record in the case, and hereby adopts the findings, conclusions, and recommendations with the following modifications:

The Trial Examiner found, and we agree, that the Charging Parties, having effectively resigned from the Union before they crossed its picket line at their place of employment, were not subject to the Union's discipline for their postresignation conduct. The Trial Examiner therefore correctly concluded that the Union, by fining its former members, the Charging Parties herein, for conduct engaged in by them after

* The Respondent's request for oral argument is hereby denied as, in our opinion, the record, exceptions, and briefs adequately present the positions of the parties.

their resignations from the Union and by seeking judicial enforcement of such fines, violated Section 8(b) (1)(A) of the Act. In so finding, however, we rely upon the rationale more fully explicated in *The Boeing Company*,* which issued after the Trial Examiner's Supplemental Decision herein.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the Recommended Order of the Trial Examiner's Supplemental Decision and hereby orders that the Respondent, Granite State Joint Board, Textile Workers Union of America, Local 1029, AFL-CIO, its officers, agents, and representatives, shall take the action set forth in the Trial Examiner's Recommended Order, as so modified:

1. Delete paragraph 1(a) of the Trial Examiner's Recommended Order and substitute the following:

"(a) Imposing fines, or seeking judicial enforcement of such fines, against former members for crossing its picket line at International Paper Box Machine Company after they had resigned from the Union."

2. Add the following new paragraph 2(b), and re-letter present paragraphs 2(b), (c), (d), (e), (f), and (g) as paragraphs 2(c), (d), (e), (f), (g), and (h), respectively:

* *Booster Lodge No. 106, International Association of Machinists and Aerospace Workers, AFL-CIO (The Boeing Company)*, 185 NLRB No. 23.

* We agree with the Trial Examiner that the matter of the reasonableness of the Union's fines is an immaterial consideration herein, *International Association of Machinists and Aerospace Workers, AFL-CIO, Local Lodge No. 504 (Arrow Development Co.)*, 185 NLRB No. 23.

"(b) Reimburse or refund to any employees named in Appendix A who may have paid fines under the circumstances described in paragraph 1(a) of the Order the amount, if any, of said fines plus interest thereon at the rate of 6 percent per annum."*

3. In footnote 8 of the Trial Examiner's Supplemental Decision, substitute "20" for "10" days.

4. Substitute the attached Appendix B for the Trial Examiner's Appendix B.

Dated, Washington, D.C.

(SEAL) EDWARD B. MILLER, *Chairman*

HOWARD JENKINS, Jr., *Member*

NATIONAL LABOR RELATIONS BOARD

Member BROWN, dissenting:

For reasons stated in my separate opinion in *Booster Lodge No. 405, International Association of Machinists and Aerospace Workers, AFL-CIO (The Boeing Company)*, 185 NLRB No. 23, I would find no violation of Section 8(b)(1)(A) of the Act in these cases and would dismiss the complaint in its entirety.

Dated, Washington, D.C.

GERALD A. BROWN, *Member*,

NATIONAL LABOR RELATIONS BOARD.

**Booster Lodge No. 405, International Association of Machinists and Aerospace Workers, AFL-CIO (The Boeing Company)*, *supra*, fn. 8.

APPENDIX B

NOTICE TO EMPLOYEES AND MEMBERS

POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS
BOARD, AN AGENCY OF THE UNITED STATES GOVERNMENT

WE WILL NOT fine former members of this Union for crossing our picket lines at International Paper Box Machine Company after they have resigned from the Union, nor will we try to collect such fines by suing them in the courts.

WE WILL NOT restrain or coerce our former members in the exercise of rights guaranteed to them by Section 7 of the National Labor Relations Act, as amended.

WE WILL rescind the fines we have imposed against the persons named below, change our records to show that we have rescinded these fines, and take all necessary action in the courts of New Hampshire to withdraw and give up all claims for collection of such fines.

Alonzo Bealand

Roger Bernier

Marcel Berube

Jean Boutin

Eugene Collard

Robert Depontbriand

Leonard Desjardins

Leo Dubois

Aurel Duval

Bernard Francis

Roger Gagne

Adrian Gagnon

Clovis Gamache

Robert Guerrette

Hazen Johnson

Maurice Kimball

Armand Levesque

Peter Makris

Paul Marquis

Ronald Maynard

William Mayo

Franklyn McAlister

Roland Michaud
John Nadeau
Felix Radziewicz
Emilien Riendeau

Robert Roy
Zennie Runowicz
Alfred Theriault
Henry Tremblay
Gerald Tyler

WE WILL reimburse the above nonmembers for any fines they may have paid to us for working behind our picket line at International Paper Box Machine Company plus interest at the rate of 6 percent per annum.

GRANITE STATE JOINT BOARD, TEXTILE
WORKERS UNION OF AMERICA, LOCAL 1029,
AFL-CIO

(Labor Organization)

Dated _____ (Representative) _____ (By) _____ (Title)

This is an official notice and must not be defaced by anyone.

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material.

Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, 20th Floor John F. Kennedy Federal Building, Cambridge & New Sudbury Streets, Boston, Massachusetts 02203, Telephone 617-223-3330.

United States of America

BEFORE THE NATIONAL LABOR RELATIONS BOARD

DIVISION OF TRIAL EXAMINERS

Washington, D.C.

Case No. 1-CB-1460-1-2

**GRANITE STATE JOINT BOARD, TEXTILE WORKERS
UNION OF AMERICA, LOCAL 1029, AFL-CIO (INTER-
NATIONAL PAPER BOX MACHINE COMPANY)**

and

FELIX RADZIEWICZ, MAURICE K. KIMBALL, II,

INDIVIDUALS

**Thomas P. Kennedy, Esq., for the General Counsel.
Harold B. Roitman, Esq., Boston, Mass., for Re-
spondent.**

TRIAL EXAMINER'S DECISION

STATEMENT OF THE CASE

MILTON JANUS, Trial Examiner: Charges were filed by Felix Radziewicz and Maurice K. Kimball II, on December 9, 1968, against Granite State Joint Board, Textile Workers Union of America, Local 1029, AFL-CIO, referred to hereafter as the Respondent or the Union. A complaint based thereon was issued by the Regional Director for Region 1 on January 29, 1969, and an amendment thereto on February 12. The

complaint, as amended, alleges that the Union violated Section 8(b)(1)(A) of the Act by threatening employees of International Paper Box Machine Company, who were claiming to be no longer members of the Union with excessive fines if they failed to support its strike against the Company and/or attempted to resign from the Union, and by threatening employees with bodily harm and property damage if they failed to support its strike.¹ Respondent's answer denies the material allegations of the complaint.

I conducted a hearing in this matter at Nashua, New Hampshire, on March 25, 1969. Briefs have been received from the General Counsel and the Union, and have been fully considered.

Upon the entire record in the case, and from my observation of the witnesses and their demeanor, I make the following:

FINDINGS OF FACTS

I. JURISDICTIONAL FACTS

International Paper Box Machine Company is a New Hampshire corporation with its principal place of business at Nashua, N.H., where it is engaged in the manufacture and sale of automatic paper box making and gluing machines. During a representative 12-month period preceding the issuance of this complaint, the Company received material valued in ex-

¹ The pertinent language of the statute reads as follows:

Sec. 8(b) It shall be an unfair labor practice for a labor organization or its agents—

(1) to restrain or coerce (A) employees in the exercise of the rights guaranteed in section 7: Provided, that this paragraph shall not impair the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership therein; . . .

cess of \$50,000 from points directly outside New Hampshire, and shipped products directly to points outside that State valued in excess of \$50,000. I find that the Company is an employer engaged in commerce within the meaning of the Act.

II. THE LABOR ORGANIZATION INVOLVED

Granite State Joint Board, Textile Workers Union of America, Local 1029, AFL-CIO, admits, and I find, that it is a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

The Factual Background

The Union has represented the production and maintenance employees of the Company for more than 20 years. Pursuant to a strike vote, the employees went on strike September 20, 1968, over economic issues upon the expiration of the latest agreement. The strike was still current in late March 1969, when this hearing was held. Although the plant remained open, the only employees at work were supervisors, clerical, office and technical employees, and 3 or 4 employees in the bargaining unit who were not union members. About 160 employees remained on strike, honoring a token picket line which kept the main gate of the plant under surveillance.

The motion to strike the Company was voted on at a duly called meeting of union members the Saturday before expiration of the contract. Practically all the members were in attendance, and they assented to the strike by a standing vote, with only one member dissenting. The following Saturday, a day or two after the inception of the strike, another union meeting was

held to discuss organization and tactics. A rank-and-file member proposed a motion that anyone aiding or abetting the Company or its officials during the strike be subject to a \$2000 fine.* The motion was adopted unanimously without debate.

Radziewicz and Kimball decided independently in November that they would abandon the strike and return to work for the Company. Knowing of the Union's vote that members who aided the Company during the strike could be fined \$2000, each believed that he could avoid the possible effects of the fine motion by resigning from the Union. Radziewicz sent a letter of resignation to the Union on November 5, and Kimball on November 25. Within a day or so of the receipt of each resignation, Pitarys, manager of the Granite State Joint Board, sent each of them a letter, substantially identical, saying that he was surprised at the attempt to resign, that they were not familiar with the provisions and procedures they were required to adhere to when they chose to become members, and that they were still considered to be members in good standings, required to abide by the Union's rules and regulations. Further, Pitarys' letters went on to say, "In the event you have any thought that your action

* Two witnesses for the Respondent, Pitarys, a vice-president of the International Union and manager of the Granite State Joint Board, and Arel, who was recording secretary of Local 1029 in September 1968, testified that the motion as offered and adopted was to the effect that the fine be \$2000 or any amount determined by the Union. The official minutes of the meeting, kept by Arel, were not offered by Respondent. I note, moreover, that the letters of Pitarys to Radziewicz and Kimball mention only a \$2000 fine, referring neither to the possibility of a larger or a smaller fine. I shall consider, in my later discussion, that the amount of the fine which Radziewicz and Kimball thought the Union could impose on them was a flat \$2000.

removes you from your obligation as a union member, or that you have the right to cross the picket lines, let me caution you that you will be subject to a fine of \$2000 as per the unanimous action taken by the local union."

After getting the letter from Pitarys, Kimball spoke to a supervisor of the Company, and asked him if it was true that the Union could fine him. The supervisor said he could not tell him what the Union could do, and Kimball then made no attempt to return to work for the Company. Radziewicz did go back to work secretly for the Company for 3 days around Thanksgiving, but after Pitarys called him by phone a number of times, and referred to his letter cautioning him about a \$2000 fine, Radziewicz decided not to work behind the picket line.* The Union has taken no action against Radziewicz or Kimball by way of charges or proceedings for the purpose of fining them or imposing any other type of discipline. It is clear that Kimball, at least, whatever his intentions might have been with respect to working behind the picket line when he attempted to resign, took no overt action about abandoning the strike.

The bargaining agreement which expired September 20, 1968, had provided that employees who were union members on its effective date 3 years earlier, or who joined the Union during its term, were to remain members in good standing. The agreement had also provided that the Company would deduct union dues

* Radziewicz also testified that Pitarys threatened him in one of these conversations that if he went back to the plant the next working day, the pickets would be watching for him, and that Pitarys would not be responsible for what might be done to him or to his car. Pitarys flatly denied making any threat of physical harm or damage to Radziewicz. I credit Pitarys.

and initiation fees from the wages of any employee who authorized it to do so in writing. Radziewicz had been a member of the Union since 1960, while Kimball had joined it in December 1967, some 7 months after his employment with the Company. Each had signified his intention to join by signing an application for membership which included an authorization to the Company to deduct his initiation fees and dues. The combined application for membership and check-off authorization read as follows:

I, the undersigned hereby accept membership in Textile Workers' Union of America, AFL-CIO, and do hereby authorize and direct

INTERNATIONAL PAPER BOX MACHINE COMPANY, NASHUA which is my employer, to deduct from my wages the membership dues including initiation fees, in the amount fixed pursuant to the Constitution and the By-Laws of my Local Union and to pay over same to the Union or its designated agent pursuant to the provisions of any current or future collective agreement.

This authorization shall remain in effect until revoked by me and shall be irrevocable for a period of one year from the date hereof or until the termination date of any applicable collective agreement, whichever occurs sooner; unless I revoke it by sending written notices to my Employer and the Local Union by registered mail, only during a period of ten days immediately succeeding the termination date of any applicable collective agreement or yearly period, it shall be automatically renewed as an irrevocable checkoff from year to year, until duly revoked as herein provided.

The combined application and dues check-off authorization card does not set out a procedure by which a union member may resign. It does, of course, permit revocation of the dues check-off authorization within the time periods specified in Sec. 302(c)(4) of the Labor Management Relations Act, as amended, but the language provides for no more than that—it is completely silent on when or if the Union will recognize a resignation as effective.* The authorization card thereby mirrors what the constitutions and by-laws of the Textile Workers Union of America, the Granite State Joint Board, and Local 1029 already provide for—that a member may not voluntarily withdraw from the Union except by leaving the industry, in which case he may obtain a withdrawal card. Death, presumably, provides the only other means of exit from the Union.

The Union also attempted to show that Kimball had in effect revoked his letter of resignation by accepting a Thanksgiving turkey from it after his letter to the Union. The evidence as to whether Kimball accepted one of the Union's turkeys is unclear, but even if he had, I would not consider it to be a meaningful retraction of his attempt to resign.

Analysis and Conclusions

The Supreme Court held in *N.L.R.B. v. Allis-Chalmers Manufacturing Company*, 388 U.S. 175, 87

* Under the maintenance of membership provision of the last expired agreement, a union member who had revoked his check-off authorization in a timely fashion, that is within the 10 day period following his anniversary of acquiring membership would still be obligated to remain a member in good standing for at least the remaining term of the agreement. Failure to retain good standing by payment of his union dues could result in his discharge at the Union's request of the Company, under Sec. 8(a)(8) of the Act.

S. Ct. 2001, that the Union in that case had not violated Sec. 8(b)(1)(A) of the Act by seeking judicial enforcement for a fine of \$100 imposed on a member who had engaged in strike-breaking activities. In *Scofield v. N.L.R.B.* — U.S. —, 89 S. Ct. 1154, (April 1, 1969) the Court held that a union rule imposing a ceiling on payments for incentive work was valid and could be enforced through collection of reasonable fines without violating Sec. 8(b)(1)(A).

The Court's opinions in these two cases were obviously intended to illuminate a broader area than that under direct consideration. A brief statement of the general principle involved is given in *Allis-Chalmers*, at 388 U.S. 195:

Thus this history of congressional action does not support a conclusion that the Taft-Hartley prohibitions against restraint or coercion of an employee to refrain from concerted activities included a prohibition against the imposition of fines on members who decline to honor an authorized strike and attempts to collect such fines. Rather, the contrary inference is more justified in light of the repeated refrain throughout the debates on Sec. 8(b)(1)(A) and other sections that Congress did not propose any limitations with respect to the internal affairs of unions, aside from barring enforcement of a union's internal regulations to affect a member's employment status.

There are as yet no decisions of the Board in which it has worked out the implications of *Allis-Chalmers* and *Scofield*. Specifically, among the unanswered questions are the two presented here: (1) is it critical, in determining whether a union has violated Sec. 8(b)(1)(A) that the amount of the fine is "unreasonable", and under what circumstances does it become unrea-

sonable; and (2) is it critical, for purposes of the same determination, that membership in the union was in some sense involuntary.

1. *Reasonableness of the fine.* It is clear from both *Allis-Chalmers* and *Scofield* that the Court considered the amount of the fines for which judicial enforcement was sought in those cases as reasonable. There are scattered references throughout the two opinions that the reasonableness of the fine, at least when judicial enforcement was sought, was a factor in deciding whether a violation would be found. But there are other parts of the two opinions where the absence of a reference to *reasonable* fines might lead one to conclude that the amount of the fine was beyond the scope of the Board's inquiry.⁵

However, since I assume that the Court did not knowingly refer to the reasonableness of a fine without intending it to have some significance, an attempt must be made to fit the concept into the context of the Court's actual holdings. It must again be noted, in preface, that the Court held the fines *as enforced by the state courts* in *Allis-Chalmers* and *Scofield* as reasonable, and that court enforcement of a fine is the final stage of a fine proceeding. The preliminary stages recognized by the opinions, through which a

⁵ E.g. *Allis-Chalmers v. N.L.R.B.*, 388 U.S. 175 at 191-192: "Cogent support of an interpretation of the body of Sec. 8(b) (1) (A) as not reaching the imposition of fines and attempts at court enforcement is the proviso to Sec. 8(b) (1) . . . At the very least it can be said that the proviso preserves the rights to unions to impose fines, as a lesser penalty than expulsion, and to impose fines which carry the explicit or implicit threat of expulsion for nonpayment." It would seem that if a union may expel a member for violation of a union rule without first fining him, then the amount of a fine for which expulsion may later be sought is immaterial.

union's fine motion may proceed, are as follows: (1) the *passage* of the motion in an approved manner, or the prior existence of a union rule with or without a prescribed penalty; (2) *notification* to a member of the union action or existing rule; (3) *imposition* of a fine in accordance with the procedure prescribed in the Landrum-Griffin Act;* and (4) *enforcement*, either judicially or through the union's own internal machinery.

Notification, meaning a cautionary announcement to strikebreakers that their offense might be punishable by a fine, is found by the Court in *Allis-Chalmers, supra*, at page 192, footnote 30, not to be an unfair labor practice at least under the proviso, if not under the body of Sec. 8(b)(1), primarily because no inference can be drawn from the notification that court enforcement would be the means of collection. It would thus seem that even a "threat" or "caution" of an unreasonably large fine to employees whom the Union believed to be ready to engage in strikebreaking would not be a violation, unless perhaps, court enforcement was also threatened. Although such a notification may be given before the imposition of a fine, it is only the latter which is, assuming the Union's compliance with Sec. 411(a)(5) of the Landrum-Griffin Act, efficacious. Until the prescribed procedure has been followed, a cautionary announcement to a possible offender that a fine may be imposed is not, it

* Pub. L. 86-257, 73 Stat. 522, 29 U.S.C. Sec. 411 et seq. Sec. 411(a)(5) reads: "Safeguards against improper disciplinary action.—No member of any labor organization may be fined, suspended, expelled or otherwise disciplined except for nonpayment of dues by such organization . . . unless such member has been (A) served with written specific charges; (B) given a reasonable time to prepare his defense; (C) afforded a full and fair hearing.

seems to me, any more an unfair labor practice than the fine motion itself. There is no hint in either of the Court's opinions that promulgation of a valid union rule and a prescribed penalty, even though "unreasonable", would constitute a violation of Sec. 8(b)(1) (A).

I need not therefore decide in this case whether the imposition of a \$2000 fine would have been unreasonable *per se*; whether the surrounding circumstances might affect a determination as to the reasonableness of a fine;^{*} or whether court enforcement of an imposed fine in such amount would be an unfair labor practice. I find here that the notification to the potential strikebreakers, Kimball and Radziewicz, of the Union's fine motion, of which they were already aware, and the explicit warning that they would be subject to a \$2000 fine was not an unfair labor practice. This does not, however, necessarily dispose of the case.

2. *The Resignations.* The General Counsel contends that a union's right to impose a reasonable fine on a member for failing to support its strike does not extend to a threat to fine an employee who has resigned his membership, without regard to the reasonableness of the fine. The main thrust of the Respondent's argument is that Kimball and Radziewicz could not resign when they attempted to do so, that they are still union members, and that the Board does not have the authority "to pass judgment on the

^{*} Such surrounding circumstances might be the duration of the strike and what the employee might have earned if he had gone back to work despite the imposition of the fine, as compared with the amount of the fine.

penalties a Union may impose on a member." * The Union argues, however, that if Kimball and Radziewicz had in fact resigned, and if the Pitarys letters were a threat, they were nevertheless not coercive within the meaning of Sec. 8(b)(1)(A) because the obligations of membership, no matter how severe, simply do not apply to nonmembers.

The Supreme Court's opinions in *Allis-Chalmers* and *Scofield* make occasional references to "full membership" but they appear to relate to the problem of an employee obligated under a union-security provision to become a union member who chooses not to assume the responsibilities of full membership but to satisfy his financial obligations by paying the equivalent of the initiation fee and the monthly dues. There is, however, a statement in *Scofield* which speaks more directly on the issue of a union's right to fine a member who seeks to resign. It reads as follows (89 S. Ct 1154 at 1158):

Under this dual approach, Sec. 8(b)(1) leaves a union free to enforce a properly adopted rule which reflects a legitimate union interest, impairs no policy Congress has imbedded in the labor laws, and *is reasonably enforced against union members who are free to leave the union and escape the rule.* (Underscoring not in original).

The quoted language does not refer to the conditions governing resignations, such as whether a member

* The quotation is from the Board's decision in the *Wisconsin Motors* case 145 NLRB 1097, 1104, enforced by the Supreme Court *sub nom. Scofield v. N.L.R.B. supra*.

must comply with internal union regulations as to their time and manner, or whether a resignation need be accepted at all if the union makes no provision for voluntary resignations while still employed in the industry.

There are, however, certain statutory and Board principles which are of help in determining the rights and obligations of unions toward employees who seek to resign their union membership. There is first, of course, the proviso to Sec. 8(b)(1)(A) which enjoins impairment of a union's right to prescribe its own rules as to the acquisition or retention of membership. There are also those Board cases which hold that a union violates Sec. 8(b)(2) if it seeks the discharge for nonpayment of dues of an employee who has resigned at a time when a union security, or maintenance of membership, clause was not in effect, or who has resigned at any time from a union which does not provide by its constitution or bylaws for any effective method of resignation.* These cases certainly hold that a Union cannot prevail against an otherwise valid charge of violating Sec. 8(b)(2) by invoking the proviso to Sec. 8(b)(1)(A). Even the *Paulling* case on which Respondent relies, (*N.L.R.B. v. International Union, Automobile Workers etc.*, 320 F. 2d.

* *Aeronautical Industrial District Lodge 751 etc. (The Boeing Company)* 173 NLRB No. 71; *Local Union No. 621, United Rubber etc. Workers, (Atlantic Research Corporation)* 167 NLRB No. 83, fn. 1; *International Union, United Automobile etc. Workers, (John I. Paulling, Inc.)* 142 NLRB 296; 137 NLRB 901, set aside in *N.L.R.B. v. International Union, etc.* 320 F. 2d 12 (C.A. 1); 130 NLRB 1035, *enfd N.L.R.B. v. International Union, etc.* 297 F. 2d 272, (C.A. 1); *Newspaper Guild of Buffalo, Local No. 26*, 118 NLRB 1471; *Marlin Rockwell Corporation*, 114 NLRB 553; *New Jersey Bell Telephone Company*, 106 NLRB 1322, *enfd* 215 F. 2d 835 (C.A. 2).

12), does not go so far as to hold that a union which provides no effective method of resignation may continue to treat employees who attempt to resign, as members thereafter. See the caveat in this opinion at 320 F. 2d 12, 15-16, "Needless to say, as we indicated in a prior opinion between these same parties; 'it may be that . . . there is a limit of reasonableness beyond which a union may not go' in structuring its internal regulations."

In the instant case, when Kimball and Radziewicz resigned, there was no contractual provision in effect which required them to remain members, nor did the union's constitution allow them any free period in which to revoke their membership. But the Union has not sought to affect their job security in any manner. It has, at most, threatened to take steps to impose a fine if they should cross its picket lines. There are, however, intimations in the pertinent cases that resignation from a union is a right protected by Sec. 7 of the Act, embodying a public policy to which the proviso of Sec. 8(b)(1)(A) must be subordinated.¹⁰

I am led to conclude from the cases cited in footnote 10 that Kimball and Radziewicz effectively resigned despite their "contract of membership" with the Union which forbade their resignations.

To return then to the basic question already posed: If Kimball and Radziewicz were no longer members of the Union when Pitarys sent them his warning letters, can the Union be said to have violated Sec. 8(b)(1) thereby? It can be said with a kind of blinkered logic that nonmembers cannot be coerced by a threat

¹⁰ *Marlin Rockwell Corporation*, 118 NLRB 553, 559-562; *Communications Workers of America v. N.L.R.B.* 215 F. 2d 835 at 838, (C: A. 2) enforcing *New Jersey Bell Telephone Company*, 106 NLRB 1322.

to impose a fine based on failure to fulfill the obligations due only of a member. It is true, however, only if the nonmember can divine what the Board and the courts may decide in his particular case years later. Faced with the immediate risk in having to decide what the Union might be able to do, it is not surprising that Kimball and Radziewicz decided to forego their Sec. 7 right to work during the strike rather than face the potential risk of a heavy fine.

However, the issue of whether the Pitarys letters were intimidating in fact is yet dependent on the primary issue of whether the letters constituted restraint or coercion within the meaning of Sec. 8(b)(1). If it is not restraint or coercion to caution members about a possible fine, it is certainly no more violative to caution nonmembers.

I have previously concluded that the Pitarys letters went no further, and accomplished no more than the fine motion did, and since a fine motion or other valid union rule against strikebreaking is not in itself a violation, further notification of its passage or existence either to members or nonmembers is also not a violation. The Union did not impose fines on Kimball or Radziewicz, in compliance with the procedures required by Sec. 411(a)(5) of the Landrum-Griffin Act, nor did it seek either internal or external enforcement of its valid fine motion. It is thus unnecessary for me to decide whether it is the imposition or the enforcement of an excessive fine which violates Sec. 8(b)(1). It is also beyond the scope of my inquiry whether \$2000 is a reasonable amount for a fine, or at what stage, either imposition or enforcement, it becomes unreasonable.

I shall recommend dismissal of the complaint in its entirety.

On the basis of the foregoing findings and analysis of the facts, I made the following:

Conclusions of Law

1. International Paper Box Machine Company is engaged in commerce and in activities affecting commerce, within the meaning of Section 2(6) and (7) of the Act.

2. Granite State Joint Board, Textile Workers Union of America, Local 1029, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

3. The Respondent has not engaged in any unfair labor practices as alleged in the complaint.

RECOMMENDED ORDER

It is hereby recommended that the complaint be dismissed in its entirety.

Dated at Washington, D.C.

MILTON JANUS,
Trial Examiner.

GRANITE STATE JOINT BOARD, LOCAL 1029 (INTL. PAPER
BOX MACHINE COMPANY) 1-CB-1460 (1-2)

Please attach this Supplemental TXD to the original Decision and Order issued on December 31, 1970.

187 NLRB No. 90.

United States of America
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF TRIAL EXAMINERS

Washington, D.C.
GRANITE STATE JOINT BOARD, TEXTILE WORKERS UNION
OF AMERICA, LOCAL 1029, AFL-CIO (INTERNATIONAL
PAPER BOX MACHINE COMPANY)

and
FELIX RADZIEWICZ, MAURICE K. KIMBALL, II,
INDIVIDUALS

Case No. 1-CB-1460(1-2)
and
PAUL R. MARQUIS, EUGENE COLLARD, HAZEN R. JOHN-
SON, PETER MAKRIS, SR., INDIVIDUALS

Case No. 1-CB-1504(1-4)
and
JOSEPH M. KERRIGAN, Esq., AN INDIVIDUAL

Case No. 1-CB-1534
Thomas P. Kennedy and Gerald P. Cobleigh, Esqs.,
for the General Counsel.
Harold B. Roitman, Esq., Boston, Mass., for Re-
spondent.

TRIAL EXAMINER'S SUPPLEMENTAL DECISION

STATEMENT OF THE CASE

MILTON JANUS, Trial Examiner: On June 4, 1969, I issued a Decision in Case No. 1-CB-1460(1-2) recommending dismissal of the complaint against the Respondent, Granite State Joint Board etc. (referred to hereafter as the Union). The reason for my recommendation of dismissal was that, in my opinion, the holdings of the Supreme Court in *Allis-Chalmers v. N.L.R.B.*, 388 U.S. 175, and in *Scofield v. N.L.R.B.*, 394 U.S. 423, required a finding that Section 8(b)(1)(A) was not violated by the Union's warning the charging parties, Radziewicz and Kimball, that they would be subject to fines if they engaged in strike-breaking. I also held in my Decision that Radziewicz and Kimball could resign from the Union at any time in the absence of provision in the Union's constitution or by-laws for resignation at specified intervals, and that the resignations they had submitted to the Union were effective.

The General Counsel filed exceptions to my Decision on June 26, 1969. Two days earlier, on June 24, charges had been filed against the Union in Case No. 1-CB-1504(1-4) by the individuals named in the caption, charging a violation of Section 8(b)(1)(A) by the Union's threats to fine them if they crossed the Union's picket line at the International Paper Box Machine Company plant where the Union was on strike.

On July 3, 1969, the General Counsel filed a Motion with the Board to reopen the record in Case No. 1-CB-1460(1-2), alleging that the Union had filed formal charges against Radziewicz and Kimball for

crossing its picket line at the Company's plant, thereby going beyond its previous warnings to them which I had found not to be violative of the Act.

On September 3, 1969, Peter Kerrigan, an attorney, filed a charge in Case No. 1-CB-1534 on behalf of 23 named individuals, employees of the Company, alleging that the Union had fined them for crossing its picket lines and had brought suit in a State court to collect the fines which it had imposed.

On October 20, 1969, the General Counsel ordered Case Nos. 1-CB-1504(1-4) and 1-CB-1534 consolidated for hearing, and issued his complaint in that consolidated proceeding alleging that the Union had violated Section 8(b)(1)(A) by threatening to impose fines, by fining and by seeking judicial enforcement of such fines against employees of the Company who had resigned from the Union and had returned to work during the Union's strike against the Company.

Two days later, on October 22, the Board granted the General Counsel's motion to reopen the record in Case No. 1-CB-1460(1-2) and remanded it to me to take evidence as to conduct which occurred after the close of the hearing in that case and which bore directly on the conduct alleged in that complaint. Thereafter, on October 24, the General Counsel filed a motion with me to consolidate the remanded case with the two cases which he had previously consolidated and on which he had issued a new complaint. I issued an Order granting the General Counsel's motion, on November 10, 1969, and reaffirmed it on November 14, after the Union's request for reconsideration. A hearing was thereafter held on the entire consolidated proceeding on November 20, 1969, at Nashua, New Hamp-

shire.¹ The Union filed a brief after the hearing which I have considered. I have also considered later communications from both the Union and the General Counsel advising me of certain recently issued Trial Examiner's Decisions supporting their respective positions.

Upon the entire record in the case and from my observation of the witnesses, I make the following:

ADDITIONAL FINDINGS OF FACT

The essential facts here are not in dispute, and at the risk of some repetition, I will summarize what is already set out in my original Decision as a prelude to a description of the events which have taken place since then.

The last bargaining agreement between the Company and the Union expired September 20, 1968, and on that date the Union began an economic strike which was still in force on the date of the latest hearing, November 20, 1969. Almost the entire working force were members of the Union under a maintenance-of-membership provision in the last contract, and all of the Union members went out on strike. The strike vote had been unanimously adopted, and a motion to fine anyone who aided the employer during the strike in the amount of \$2000 was adopted at a Union meeting with only one dissenting vote.

Radziewicz and Kimball sent letters of resignation to the Union in November, 1968, and the Union quickly

¹ By arrangement at the hearing an exhibit number, G.C. 11, was reserved for later submission by Mr. Kerrigan, the attorney for the charging parties. It is now part of the official record of the case.

replied, advising them that their purported resignations were ineffective, that they were still members subject to the Union's rules, and cautioning them that they were subject to a fine of \$2000 if they insisted on going back to work during the strike. Kimball did not attempt to return to work, while Radziewicz, who had gone back to work for a few days, then decided not to continue working behind the picket lines.

On these facts, I held in my original Decision that neither the fine motion, passed by the membership at the inception of the strike, nor the Union's letter to Radziewicz and Kimball on receipt of their resignations constituted imposition of a fine within the meaning of Sec. 411(a)(5) of the Landrum-Griffin Act, 29 U.S.C. 401 et seq., and that it was therefore unnecessary for me to decide whether a \$2000 fine, if it had been imposed, would have been unreasonable. I went on to find that since the Union's constitution did not provide for voluntary resignations under any circumstances or at any particular time, Radziewicz and Kimball were free to resign whenever they chose. Resignation from a Union was, I found, a right protected by Sec. 7 of the Act.² I recommended dismissal of the complaint since I found no violation of Section 8(b)(1)(A) by the Union warning the two charging parties that they might be fined for crossing its picket line at the Company's plant.

What follows is a recital of the events occurring after June 4, 1969, the date of my Decision. As soon as the Company was notified of that Decision, it sent letters to all the striking employees (Respondent Exhibit 3) advising them that my Decision meant that

² My reason for considering the resignation problem at all was in connection with the arguments of both parties on whether a nonmember can be restrained or coerced by a threat to fine him.

employees who resigned from the Union could not be fined, and that they were therefore free to cross the picket line and return to work.

A few days later, the Union responded to the Company's invitation to the strikers to return to work with a letter (General Counsel Exhibit 2) to its members, warning them that the Supreme Court had upheld a Union's right to fine anyone engaged in strikebreaking, and that charges would be brought against anyone doing so. It urged them not to be misled by the Company.

Shortly before my Decision was issued, a third employee, Hazen Johnson, resigned. After the Decision, beginning on June 6, 1969, and for some months following, there were many more resignations, totalling 31 altogether. (Their names are listed in Appendix A.) After resigning, they returned to work for the Company, crossing the picket lines to do so. While they had been out on strike, many of these 31 had obligated themselves in a written statement to the Union, to reimburse it for the premiums which the Union would pay to keep their group insurance policies current. Many of them also accepted cash payments from the Union while they were striking.

After they returned to work, the Union sent each of the 31 a letter charging him with misconduct by crossing its picket line, and requesting him to appear at a hearing at a specified time to answer the charge. None of them appeared as requested. The Union then notified each of them that a hearing had been held, and that a fine had been imposed on him amounting to a day's pay for each day worked. Some time later, the Union sent each of them a letter informing him that it had not yet heard from him about

paying his fine, and threatening him with legal action to collect it. None of them paid the fine imposed, and the Union then filed a suit and writ of attachment against each in the New Hampshire state courts. The suits claim a specific amount due the Union as a result of the defendant's contract of membership in the Union and, where applicable, a second count based on its claim for moneys advanced on his behalf for insurance premiums. However, the amount claimed is in all cases greater than the specific sums alleged to be due and owing. For example, the action brought against Eugene Collard is for \$1400 in the first count, and \$195.14 in the second, while the total amount claimed is \$2000.

CONTENTIONS, ANALYSIS AND CONCLUSIONS

The General Counsel has already filed exceptions to my Decision in the original proceeding and stands by the contentions raised then, that the Union's letters to Radziewicz and Kimball after their resignations in November 1968, are threats to impose excessive fines and are in themselves violative of Section 8(b)(1) (A). As to the imposition of fines on the 31 charging parties now involved in the consolidated proceeding, and the suit for judicial enforcement of these fines, the General Counsel argues, in the alternative: (1) that the 31 all effectively resigned from the Union and that a threat to fine, or the imposition of a fine in any amount, on nonmembers of a Union is restraint or coercion of their Section 7 right not to remain a member; but assuming, however, that their resignations may have been ineffective for some reason, so that they were still members when the Union fined them, then in that event, the fine of a day's pay for each day worked is excessive, since its effect is to force them to

quit working for the Company. This latter argument is based on the General Counsel's contention, already made in the first proceeding, that the *Allis-Chalmers* and *Scofield* cases should be construed to mean that the imposition of an unreasonable or excessive fine is a violation of Section 8(b)(1)(A).

The Union's basic arguments, like that of the General Counsel, center on the resignations. It argues that some or all of the resignations were ineffective, but that even if the 31 employees did in fact resign, the obligations they assumed when they went on strike must be fulfilled, and if not fulfilled, the Union has a right to require satisfaction from them by the imposition and collection of fines.

First, as to the ineffectiveness of the resignations. The Union relies on the combined membership application and dues check-off authorization which each of the 31 agreed to (set out in my original Decision), arguing that the 10 day period after the expiration of the collective-bargaining agreement within which dues check-offs could be revoked was also intended as the allowable period for resignations from the Union. It makes the point that it has in fact accepted resignations during that interval despite the silence of its constitution or by-laws on the procedure or period for voluntary resignations. It argues from there that it did in fact provide a procedure and an allowable interval within which resignations could be made and accepted as effective. I find the argument unpersuasive. No employee could be expected to know from the combined membership application and authorization form that the method to be used for revoking his check-off authorization (sending a registered letter to his employer and to the Union) was also meant to provide a method of resigning from the Union.

An employee might well intend to remain a Union member but choose not to have his Union dues checked off by his employer, so that revocation of the authorization does not imply resignation from the Union. Also, an employee concerned about his right to resign would certainly expect to be bound by what the Union's basic charter says or does not say on the subject, and should not be required to guess at what the Union's intentions were from an ambiguously expressed form designed for other purposes altogether.

Other arguments advanced for the ineffectiveness of the resignations are also unpersuasive since they are based on the proposition that the procedures to be followed for resignation are the same as those to be followed for revocation of the dues check-off authorization. They relate to the fact that some of the resignations were not sent by registered mail or were sent by telegram. One resignation, that of employee Desjardins, was unsigned. In fact, however, his letter gives his name and clearly expresses his intent to resign. As for those employees who resigned by ordinary mail or by telegram, I find that their resignations became effective upon receipt of their communications to the Union since no other form of communication was obligatory.

The Union also points to actions taken by employees after their resignations, which it considers inconsistent with an intent to resign. Thus, one employee may have received a strike benefit payment from the Union in the week in which he resigned, while other employees are said to have received insurance benefits after resigning. In both cases, it appears that the benefits received accrued before the resignations and are therefore not inconsistent with an effective resignation.

Finally, the Union argues that it should not be compelled to accept or honor resignations from employees who did so to please the Company which had falsified the meaning of my original Decision in order to induce their resignations. I find nothing improper in the Company's letter of June 5, 1969 (Respondent Exhibit 3) which advised all employees that my Decision meant that they could resign voluntarily at any time in the absence of restrictions on that right imposed by the Union's constitution or by-laws. That is the fair import of what I said, and I see nothing coercive or false in the Company's passing on that information. If it induced employees to resign, it was because they freely decided to do so.

For all the foregoing reasons, and for the reasons given in my original Decision in more detail, I find that the 31 employees here involved effectively resigned from the Union during the strike.¹

Assuming *arguendo* that the resignations were effective, the Union argues that it nevertheless had the right to impose fines on the charging parties for working during the strike. It points out that they had joined the Union voluntarily, without the compulsion of a union-security provision in the bargaining agreement; and that in accepting membership voluntarily, they bound themselves to adhere to the course of action freely voted on by the Union's membership. Thus, the argument goes, although the charging parties may choose to withdraw from the Union, they may not thereby avoid their obligations to accept the decision of the membership and to continue supporting the strike. Each member was induced to strike by the mutual commitment of all the

¹ See the cases cited in footnote 9 of the original Decision.

other members to do the same, and by returning to work during the strike the charging parties have breached their agreement with their fellow members. Judicial enforcement of a fine imposed for breaking a strike, it is argued, is in harmony with the national labor policy of protecting the right to strike.

The logic of the Union's argument requires the conclusion that a resignation of a union member has only a prospective effect, so that decisions made by the Union before the resignation continue to bind the former member who now seeks to repudiate the collective decision he once accepted. It is an argument that cannot be lightly brushed aside, since it is based on the proposition common in the law, that one cannot escape one's freely accepted obligations when the going gets tough. However, for more compelling considerations I must reject the Union's argument.

Section 7 of the Act protects equally the right to engage, and the right not to engage, in concerted activities including strikes. The same Section also protects the right to resign from a union* just as it does the right to join one. When an employee joins a union he assumes both rights and obligations with respect to it. To say that his obligation (in this case, to stay out on strike) continues even after he has effectively resigned would postpone to some indefinite date beyond his control his right not to strike. Further, since their right to attend Union meetings, to vote and to influence the Union's future course of action as to the strike, ended with their resignations, I believe that

* *New Jersey Bell Telephone Company*, 106 NLRB 1322, 1324, *enfd sub nom. Communications Workers of America, CIO v. NLRB*, 215 F. 2d 835, (C.A. 2), and *Marlin Bookbelle Corporation*, 114 NLRB 553, 559-562.

their obligations to the Union to support the strike must end then too.*

This is not to say, however, that monetary obligations of a member to his union which are based on an express or implied contract between them, may not survive the member's resignation.* In the category of possible monetary obligations due the Union by the charging parties are the premiums for group insurance policies which the Union advanced on their behalf, and the strike benefits which they received while they remained on strike. The suits brought by the Union in the State courts clearly seek reimbursement for the insurance premiums and possibly also for the strike benefits. The question whether the charging parties are liable for these sums, and the determination of the actual amounts due are matters over which a state court would have jurisdiction since they are based on usual contract law principles, not involving interpretation of the National Labor Relations Act. However, any part of the sums sued for which are attributable to the fines imposed by the Union on the charging parties after their resignations is, in my opinion, not collectible through resort to the State courts, because the Union would thereby be in violation of Section 8(b)(1)(A) of the Act.

* *Scofield v. N.L.R.B.*, 394 U.S. 423 at 430. "Under this dual approach, Sec. 8(b)(1) leaves a union free to enforce a properly adopted rule which reflects a legitimate union interest, impairs no policy Congress has imbedded in the labor laws, and is reasonably enforced against union members who are free to leave the union and escape the rule." This seems to me to mean that a union member must be free to "escape the rule" totally, in its retrospective as well as its prospective effects.

* *Communications Workers of America, CIO, v. N.L.R.B.* 313 F. 2d 835, 838 (C.A. 2)

The remaining contentions which the Union makes can be disposed of briefly. First, it argues that the charging parties failed to exhaust their internal union remedies even to the extent of failing to appear at the Union trials in order to claim that they had effectively resigned. But exhaustion of internal remedies would only be required of Union members, whereas here all the charging parties had resigned before the Union filed charges against them. Consequently, they were under no obligation to explain or defend their resignations at a Union hearing.

Finally, the Union argues that the fines imposed, a day's pay for each day worked, were not unreasonable. I express no opinion on whether the reasonableness of a union fine determines the legality of its imposition on members, nor on whether the amounts sought here are in fact reasonable, since in my opinion, the Union's imposition of a fine in any amount on nonmembers and its attempt to seek judicial enforcement therefor, are violations of Section 8(b)(1)(A).

THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of the Respondent set forth above, occurring in connection with the Employer's activities described in Section I of my original Decision, have a close, intimate and substantial relation to trade, traffic and commerce among the several States, and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

THE REMEDY

As I have found that the Respondent has violated Section 8(b)(1)(A) of the Act, I will recommend that it cease and desist therefrom, and take certain

affirmative action designed to effectuate the policies of the Act.

Specifically, I will recommend that the Union rescind the fines it has imposed on the 31 persons named in Appendix A, change its records to reflect such rescission, take all necessary action, in the New Hampshire courts where it is seeking judicial enforcement of its suits against these 31 persons, to withdraw and give up its claims for the fines it has imposed, and notify the said 31 persons that it has done all the foregoing.

On the basis of the foregoing findings and analysis of the facts, I make the following additional:

CONCLUSIONS OF LAW

4. The Respondent has restrained and coerced the 31 persons named in Appendix A, all of whom had effectively resigned their memberships in the Respondent, in the exercise of their right to resign said memberships and of their right not to strike against their employer, by imposing fines on them through its internal procedures, and by seeking judicial enforcement of such fines.

5. The aforesaid unfair labor practices affect commerce within the meaning of Section 2 (6) and (7) of the Act.

RECOMMENDED ORDER

Upon the entire record in this consolidated case, and pursuant to Section 10(c) of the National Labor Relations Act, as amended, I recommend that Granite State Joint Board, Textile Workers Union of America, Local 1029, AFL-CIO, its officers, agents and representatives, shall:

1. Cease and desist from:

(a) Fining or seeking judicial enforcement of fines against former members of the Union.

(b) In any like or related manner restraining or coercing its former members in the exercise of their rights guaranteed in Section 7 of the Act.

2. Take the following affirmative action designed to effectuate the policies of the Act.

(a) Rescind the fines imposed against the 31 persons named in Appendix A.

(b) Change all pertinent records to reflect the action taken to rescind such fines.

(c) Take all necessary action in the courts of the State of New Hampshire where judicial enforcement for collection of the fines imposed against the persons named in Appendix A has been brought, to withdraw and give up all claims for said fines.

(d) Notify the persons named in Appendix A that it has taken the actions which have been ordered above.

(e) Post in conspicuous places at its offices and meeting halls, and other places where notices to its members are customarily posted, copies of the attached notice marked Appendix B. Copies of said notice, on

In the event no exceptions are filed as provided by Section 10246 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, recommendations, and Recommended Order herein shall, as provided by Section 10248 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and order, and all objections thereto shall be deemed waived for all purposes. In the event that the Board's Order is enforced by a judgment of a United States Court of Appeals, the words in the notice reading "POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD" shall be changed to read "POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD."

forms provided by the Regional Director for Region 1, shall, after being duly signed by an authorized representative of Granite State Joint Board, Textile Workers Union of America, Local 1029, AFL-CIO, be posted immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter. Reasonable steps shall be taken by the Respondent to insure that said notices are not altered, defaced or covered by any other material.

(f) Furnish the Regional Director signed copies of such notice marked Appendix B for posting by International Paper Box Machine Company, in places where notices to employees are customarily posted. Copies of said notices, on forms provided by the Regional Director shall, after being duly signed by an authorized representative of the Respondent, be returned forthwith to the Regional Director for disposition by him.

(g) Notify the Regional Director for Region 1, in writing, within 20 days from the date of receipt of this Supplemental Decision and Recommended Order what steps it has taken to comply herewith.*

Dated at Washington, D.C.

MILTON JANUS,
Trial Examiner.

* In the event that this Recommended Order is adopted by the Board, this provision shall be modified to read: "Notify said Regional Director, in writing, within 10 days from the date of this Order what steps Respondent has taken to comply herewith."

Alonso Bédard	Armand Lévesque
Roger Bernier	Peter Makris
Marcel Blais	Paul Marquis
Jean Boutin	Ronald Maynard
Eugene Collard	William Mayo
Robert Depondriand	Franklyn McAlister
Leonard Desjardins	Roland Michaud
Leo Dubois	John Nadeau
André Duval	Felix Radniewicz
Bernard Francis	Emilien Blendeau
Roger Gagné	Robert Roy
Adrian Gagnon	Zennie Banowicz
Olivin Gilmache	Alfred Theriault
Robert Guerrette	Henry Tremblay
Helen Johnson	Gerald Tyler
Maurice Kitchell	

(b)(7)

ORDERED BY THE NATIONAL LABOR
RELATIONS BOARD IN A JUDGMENT OF THE UNITED
STATES COURT OF APPEALS EXPRESSED AN
ORDER OF THE NATIONAL LABOR RELATIONS
BOARD.

Appendix B

NOTICE TO EMPLOYEES AND MEMBERS

POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS
BOARD

An Agency of the United States Government

WE WILL NOT fine former members of this Union for crossing our picket lines, nor will we try to collect such fines by suing them in the courts.

WE WILL NOT restrain or coerce our former members in the exercise of rights guaranteed to them by Section 7 of the National Labor Relations Act, as amended.

WE WILL rescind the fines we have imposed against the persons named below, change our records to show that we have rescinded these fines, and take all necessary action in the courts of New Hampshire to withdraw and give up all claims for collection of such fines.

Alonso Bealand
Roger Bernier
Marcel Berube
Jean Boutin
Eugene Collard
Robert Depontbriand
Leonard Desjardins
Leo Dubois
Aurel Duval
Bernard Francis

Roger Gagne
Adrian Gagnon
Clovis Gamache
Robert Guerrette
Hazen Johnson
Maurice Kimball
Armand Levesque
Peter Makris
Paul Marquis
Ronald Maynard

William Mayo
 Franklyn McAlister
 Roland Michaud
 John Nadeau
 Felix Radziewicz
 Emilien Riendeau

Robert Roy
 Zennie Runowicz
 Alfred Theriault
 Henry Tremblay
 Gerald Tyler

GRANITE STATE JOINT BOARD, TEXTILE WORKERS UNION OF AMERICA, LOCAL 1029, AFL-CIO (Labor Organization)

Dated _____ By _____
 (Representative) (Title)

**This Is An Official Notice And Must Not Be Defaced
 By Anyone**

This Notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material.

Any questions concerning this Notice or compliance with its provisions, may be directed to the Board's Office, 20th Floor John F. Kennedy Federal Building, Cambridge & New Sudbury Sts. Boston, Massachusetts 02203 (Tel. No. 617-223-3353).

APPENDIX D

United States of America

BEFORE THE NATIONAL LABOR RELATIONS BOARD

Case 15-CB-779

BOOSTER LODGE No. 405, INTERNATIONAL ASSOCIATION
OF MACHINISTS AND AEROSPACE WORKERS, AFL-CIO

and

THE BOEING COMPANY

DECISION AND ORDER

On December 30, 1968, Trial Examiner Ramey Donovan issued his Decision in the above-entitled proceeding, finding that the Respondent had engaged in certain unfair labor practices and recommending that it cease and desist therefrom, and take certain affirmative action, as set forth in the attached Trial Examiner's Decision. Thereafter, the General Counsel, the Charging Party, and the Respondent each filed exceptions to the Decision, together with supporting briefs. The Charging Party filed a reply brief. Subsequently, in response to an invitation of the Board, the Charging Party and the Respondent filed supplemental briefs. In response to the same invitation, statements of position were filed by the National Association of Manufacturers, and by the American Federation of Labor and Congress of Industrial

Organizations, joined by the International Brotherhood of Teamsters and the International Union, UAW, as *amici curiae*.

The Board has reviewed the rulings of the Trial Examiner made at the hearing and finds that no prejudicial error was committed. The Board has considered the Trial Examiner's Decision, the exceptions and briefs, the reply brief, the supplemental briefs, the statement of position *amici curiae*, and the entire record in the case. The Board adopts the Trial Examiner's findings of fact, but adopts his conclusions and recommendations only to the extent that they are consistent with the decision herein.

The essential facts of this case are not in dispute. Booster Lodge No. 405, International Association of Machinists and Aerospace Workers, AFL-CIO, hereinafter called IAM or the Union, and Boeing were parties to a collective-bargaining agreement effective from May 16, 1963 through September 15, 1965.¹ Upon the expiration of the contract, the Union commenced a lawful strike against Boeing at its Michoud plant in New Orleans, Louisiana, and at various other locations. The strike lasted 18 days. On October 2, 1965, a new contract was signed. The strikers returned to work on the following day. Both contracts contained maintenance-of-membership clauses, which required

¹ At the time of the execution of the 1963 agreement, Booster Lodge 405 was not in existence. Boeing's Michoud, Louisiana, plant was considered a "Remote Location" unit, identified with the "Primary Location" unit at Seattle-Renton, Washington. Production and maintenance employees in the Michoud unit were represented by Aeronautical Industrial District Lodge No. 751, IAM, AFL-CIO, Seattle, a signatory to the contract with Boeing. Booster Lodge 405 came into existence sometime later in 1963, but the contract was not modified to reflect this event.

new employees to notify both the Union and the Employer of their desire not to join the Union within 30 days of accepting employment.

During the strike period, some 143 employees of a unit of approximately 1900 production and maintenance workers crossed the picket line and reported for work. All had been members of the Union during the contract period. One group of strikebreaking employees, numbering some 24, made no attempt to resign from the Union. The remaining 119 strikebreaking employees submitted their voluntary resignations, in writing, to both the Union and the Employer.* Many resigned from membership prior to reporting for work during the strike. Others resigned during the course of the strike, but returned to work before submitting their resignations.* All resignations were submitted after the expiration of the original contract and before the signing of the new one. All were submitted prior to the imposition of discipline by the Union.

In late October or early November 1965, the Union notified all strikebreaking employees that charges had been preferred against them under the International

*The Union objects to the fact that notices of resignation were sent to District Lodge 751 rather than to Booster Lodge 405. However, since Booster Lodge 405 was not a party to the original contract, as explained in footnote 1 *supra*, it would appear that employees who notified District Lodge 751 were attempting to comply with contractual requirements. Moreover, District Lodge 751 notified Booster Lodge 405 of all resignations.

*Four-hundred-and-fifty dollar fines were imposed on 108 employees. Of these, 61 had resigned their union membership prior to reporting for work during the strike, and others resigned during the course of the strike. Reduced fines were imposed on 35 employees. The record as to the timing of their resignations is not clear.

Constitution for "Improper Conduct of a Member" in "accepting employment . . . in an establishment where a strike . . . exists." Employees were advised of the dates of their trials, which were to be held even in their absence, and of the availability of union-member counsel. Prior to the strike, the Union had not warned members about the possible imposition of disciplinary measures. However, the IAM constitution provides that members found guilty of misconduct after notice and a hearing are subject to "reprimand, fine, suspension, or expulsion from membership, or any lesser penalty or combination." The constitution sets no maximum dollar limitation on fines.

Fines were imposed on all strikebreaking employees, regardless of whether, or when, they had resigned from the Union. Employees who did not appear for trial were fined \$450, as were those who appeared and were found guilty. The fines of employees who appeared for trial, apologized, and pledged loyalty to the Union were reduced to 50 percent of strikebreaking earnings. The level of fines was set by the union membership. There is no indication of the method of computation. Strikebreaking employees earned between \$2.38 and \$3.63 per hour, or between \$95 and \$145 per 40-hour week. In some instances, earnings during the strike were supplemented by the inclusion of bonus or premium rates for weekends and overtime.

Reduced fines have been paid in some instances. Payments have averaged \$40. None of the \$450 fines have been paid. The Union has sent out written notices that the matter has been referred to an attorney for collection, that suit will be filed upon nonpayment of fines, and that reduced fines will be increased to \$450 in the event of nonpayment. The Union has filed suit against nine individual employees to collect the fines

(plus attorney's fees and interest). The outcome of the suits has not been determined.

A principal issue in this case is the legality of the Respondent's imposition of disciplinary fines upon individuals who had resigned from the Union before engaging in the conduct for which the discipline was imposed. The complaint alleges, and the Trial Examiner found, that the Respondent's action in fining employees in this category violated Section 8(b)(1)(A) of the Act. We agree with the Trial Examiner's conclusion.* However, as the Trial Examiner has not fully spelled out his reasoning in this regard, and in light of the views of our dissenting colleague, we believe that further explication of our reasoning is appropriate here.

Under Section 8(b)(1)(A) of the Act, it is an unfair labor practice for a labor organization to "restrain or coerce employees in the exercise of rights guaranteed in Section 7." Included among those rights is the right to refrain from engaging in any of the protected concerted activities enumerated at the beginning of Section 7.

The levy of a fine is calculated to force an individual both to pay money and to engage in particular conduct against his will. This is true regardless of the ultimate collectibility of the fine. A man who is held up at gunpoint is coerced whether or not the gun is loaded. As with the levy of a fine, the coercion lies in the calculated threat and, as has been held, the argument that the fines imposed were not collectible

The Trial Examiner's reference to a "compounded" violation of Section 8(b)(1)(A) perhaps implies that the violation is merely derivative. On the contrary, we find, as spelled out more fully herein, that the very imposition of a fine on non-members violates the Act, regardless of the amount of the fine.

in a court of law, even if accepted is besides the point." The imposition of a fine has immediate coercive consequences. Faced with the possibility of action against him, the employee may well be, for practical purposes, impelled to forego his statutory right not to honor the Union's picket line rather than risk involvement in a lawsuit whose outcome he cannot predict.⁶ Or, should he choose to take that risk, he will find it necessary to hire counsel whose services he ordinarily would not require.

The Board has long recognized that a fine is inherently coercive.⁷ Yet in situations where a union imposes disciplinary fines on its members the Board has held that the union does not violate section 8(b)(1)(A).⁸ The basis of the Board's holdings in these early fine cases was the proviso to Section 8(b)(1)(A), which exempts "the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership" from the coverage of that section. Although a union's membership rules may well be coercive, their enactment is specifically protected by the Act. In *Minneapolis, supra*,

⁶ See *NLRB v. American Bakery and Confectionery Workers' Local Union 300*, 411 F.2d 1122, 1126, (C.A. 7), enfg. 167 NLRB 596.

⁷ We do not share the confidence of our dissenting colleague in the ability of the ordinary employee to evaluate the ultimate legal consequences of the union's act. Nor would we require him to attempt to do so.

⁸ See e.g. *Minneapolis Star & Tribune Co.*, 109 NLRB 727, 733.

⁹ *Ibid.* See also *Local 283, United Automobile, Aircraft & Agricultural Implement Workers of America, UAW-CIO (Wisconsin Motor Corp.)*, 145 NLRB 1097; *Local 248 et al., United Automobile, Aerospace & Agricultural Implement Workers of America, AFL-CIO (Allis-Chalmers Mfg. Co.)* 149 NLRB 67.

The Board construed the levy of the fine as the prescription of a rule with respect to the retention of union membership, and held that the union's conduct, which was protected by the proviso, therefore did not violate Section 8(b)(1)(A).

In affirming the Board's conclusions in *Allis-Chalmers*, the Supreme Court held that the body of Section 8(b)(1)(A) was not intended to reach the conduct of a labor organization in imposing and enforcing a fine upon its members for crossing an authorized picket line.* Thus, the Court found it unnecessary to pass on the Board's holding that the proviso protected the union's conduct. Nevertheless, the basis of the Court's holding was the underlying relationship between the union and its members. Throughout the opinion, the Court emphasized the right of unions to regulate their own internal affairs. Reference was made to the "contract theory" of union membership. And, finally, the Court cited the proviso to Section 8(b)(1)(A) as offering "cogent support for an interpretation of the body of Section 8(b)(1)(A) as not reaching the imposition of fines and attempts at court enforcement."

The significance of the membership relationship is that it establishes the union's authority over its members. In joining a union, the individual member becomes a party to a contract-constitution. Without waiving his Section 7 right to refrain from concerted activities, he consents to the possible imposition of union discipline upon his exercise of that right." But

* *N.L.R.B. v. Allis-Chalmers Mfg. Co.*, 388 U.S. 175.

"The power to discipline recalcitrant members is essential to the union's self-preservation. This coercive power is protected by the proviso to Section 8(b)(1)(A).

the contract between the member and the union becomes a nullity upon his resignation. Both the member's duty of fidelity to the union and the union's corresponding right to discipline him for breach of that duty are extinguished.

In the case at bar, the Union's right to discipline employees terminated upon the employees' submission of their letters of resignation.¹¹ The attempted imposition of discipline for subsequent conduct was beyond the powers of the Union.¹² It was not consented to by the employees. Nor, in our view, was it protected by the proviso to the Act.

The holding in *Allis-Chalmers* was carefully restricted to the facts of that case. The Court expressly refused to pass on the legality of the imposition of a fine upon "limited members" of the union.¹³ It appears to us that in this reservation there was the implication that such a fine when levied against nonmembers

¹¹ The Union takes the position that voluntary resignation from its ranks is impossible of achievement because its constitution and bylaws set forth no procedure for such resignations. As this argument is contrary to long-standing Board precedent, we reject it here. See *Communications Workers of America, CIO (New Jersey Bell Tel. Co.)*, 106 NLRB 1322, enfd. 215 F.2d 835 (C.A. 2); *Local Union No. 621, United Rubber, Cork, Linoleum & Plastic Workers of America, AFL-CIO (Atlantic Research Corp.)*, 167 NLRB 610; *District Lodge 751, International Association of Machinists & Aerospace Workers, AFL-CIO (Boeing Co.)*, 178 NLRB No. 71. Moreover, as indicated *infra*, the Supreme Court in the *Scotfield* case expressly sanctioned the strategy of leaving the union to avoid discipline.

¹² The Union's disciplinary authority was, as we hold, limited to conduct engaged in during the period of membership.

¹³ While the court did not specifically refer to the fining of nonmembers, the cited reservation indicates the relevance of the membership issue.

constitutes a form of restraint and coercion proscribed by Section 8(b)(1)(A). The decisions in two subsequent fine cases reinforce that implication.

In its recent *Scofield* opinion,¹⁴ the Supreme Court summarized its construction of Section 8(b)(1)(A) as follows:

[The section] leaves a union free to enforce a properly-adopted rule which reflects a legitimate union interest, impairs no policy Congress has imbedded in the labor laws, and is reasonably enforced against union members who are free to leave the union and escape the rule [Emphasis supplied.]

This suggests that the prohibitions of Section 8(b)(1)(A) encompass union rules which do not conform with the enumerated qualifications. Included in this latter category is a rule enforced against nonunion members. By observing that members could "leave the union and escape the rule," the Court seems to have envisaged the possibility that union members could, indeed, resign membership and avoid discipline.

In the *Shipbuilding Workers* case,¹⁵ the Supreme Court found unlawful a union's attempt to discipline members for filing charges with this Board before exhausting their intraunion remedies. The Court construed Section 8(b)(1)(A) as assuring a union freedom of self-regulation only "where its legitimate internal affairs are concerned." But the imposition of discipline upon nonmembers can hardly be deemed an internal affair.

¹⁴ *Scofield, et al. v. N.L.R.B.*, 394 U.S. 423.

¹⁵ *N.L.R.B. v. Marine & Shipbuilding Workers*, 391 U.S. 418.

Our dissenting colleague treats *Allis-Chalmers* as if it existed in a vacuum, overlooking subsequent decisions and the statutory provisions themselves. But to extend the *Allis-Chalmers* doctrine beyond the perimeters of the situation there involved is to emasculate the provisions of Section 8(b)(1)(A). Such a result can hardly have been intended by the Supreme Court. It should not be reached here. In the interplay between the statutory policy to prevent coercion of employees for exercising Section 7 rights on the one hand, and the policy to permit unions to guide their internal affairs and determine their membership qualifications on the other, the former must prevail where the membership relation which justifies the latter is terminated.

For the foregoing reasons, we find that the Respondent violated Section 8(b)(1)(A) of the Act by imposing disciplinary fines upon resigners from its ranks, for acts committed after their resignations. We shall order the Respondent to cease and desist from such conduct, including attempts to collect the illegal fines through court proceedings.

Also at issue in this case is the legality of the Respondent's imposition of disciplinary fines upon two other categories of strikebreaking employees, those who crossed the picket line without resigning from the union, and those whose resignations were submitted after the commencement of strikebreaking activities but prior to the initiation of disciplinary action against them. The legality of the imposition of discipline upon members for conduct engaged in during the period of membership is clear." Accordingly,

NLRB v. Allis-Chalmers Mfg. Co., *supra*. As a majority of the Board (Members Fanning, Brown, and Jenkins), would find that the legality of union fines does not depend on their

we find that the Respondent did not violate Section 8(b)(1)(A) by fining the nonresignees. Nor, in our opinion, does the Respondent's failure to exercise its disciplinary authority with respect to the second group until after the submission of their resignations affect the legality of its action. As the source of the Union's disciplinary authority lies in the contractual relationship between the organization and its members, it is to the rules of contract law that we turn in evaluating the Union's conduct. The provisions of a contract are enforceable, and a cause of action can be brought upon them, even after the expiration or termination of the agreement. The rights and duties created by an agreement are extinguished only prospectively by the termination thereof. Thus the termination of some employees' membership here did not affect the Union's subsequent assertion of rights which had accrued to the Union during their earlier period of membership, such as the right to discipline the employees for prior strikebreaking. The effect of these employees' resignations was only to extinguish the Union's future authority over them.

Accordingly, we further find that the Respondent did not violate Section 8(b)(1)(A) of the Act by fining former members for misconduct engaged in

reasonableness, the Board does not adopt the Trial Examiner's findings, conclusions and recommendations on that issue. See *Arrow Development Corp.*, 185 NLRB No. 22, issued this day. For the reasons stated in his dissenting opinion in the *Arrow* case, Chairman McCulloch would examine the amount of the fine to determine their reasonableness in those situations where the union's imposition thereof and threatened or actual court action to collect such fines would in all other respects be lawful. Where expulsion from membership is clearly the only available method of enforcement, he would consider the size of a fine irrelevant.

prior to their resignations from among its ranks. However, this conclusion does not legitimize the imposition of discipline for conduct engaged in after the resignations. We shall order the Respondent to cease and desist from such action, and to remit a pro-rata portion of the fine, so that what remains reflects only preresignation conduct.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, Booster Lodge No. 405, International Association of Machinists and Aerospace Workers, AFL-CIO, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Restraining or coercing employees, who had resigned from and who were no longer members of the Union, in the exercise of their rights guaranteed in Section 7 of the Act, by imposing fines against such employees because of their post-resignation conduct in working at the Michoud plant during the September 1965, strike, or by threatening to seek or seeking court enforcement of such fines.

(b) In any like or related manner, restraining, or coercing employees in the exercise of rights guaranteed by Section 7 of the Act.

2. Take the following affirmative action to effectuate the policies of the Act:

(a) Reimburse or refund to any employees, described in paragraph 1(a) of this Order, who have paid fines under the circumstances described in that paragraph, the amount of said fines imposed because of post-resignation conduct in working at the plant.

(b) Post at its office and meeting hall and at the Michoud, Louisiana plant of the Boeing Company, if the Company is willing, copies of the attached notice, marked "Appendix." Copies of said notice, on forms provided by the Regional Director for Region 15, shall, after being signed by an authorized representative, shall be posted at the aforementioned locations, in conspicuous places, including all places where notices to employees are customarily posted, and reasonable steps shall be taken to insure that said notices are not altered, defaced, or covered by other material.

(c) Notify said Regional Director, in writing, within 10 Days from the date of this Order, what steps Respondent has taken to comply herewith.

IT IS FURTHER ORDERED that those portions of the complaint as to which no violation has been found be, and they hereby are, dismissed.

Dated, Washington, D.C.

(SEAL) JOHN H. FANNING, *Member.*

FRANK W. McCULLOCH, *Member.*

HOWARD JENKINS, Jr., *Member.*

NATIONAL LABOR RELATIONS BOARD.

Member BROWN, concurring in part and dissenting in part:

I join with my colleagues in dismissing the allegations of the complaint with respect to the imposition of discipline upon members for conduct engaged in during their period of membership. However, I would

"In the event this Order is enforced by a judgment of the United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted pursuant to a Judgment of the United States Court of Appeals enforcing an Order of the National Labor Relations Board."

also dismiss the remaining allegations concerning the imposition of fines upon purported resigners from the Union.

My colleagues' disposition of this question is predicated upon the premise that an employee, faced with the threat of a union fine, "may well be impelled to forego his statutory right not to honor the Union's picket line rather than risk involvement in a lawsuit whose outcome he cannot predict." But this is what *Allis-Chalmers* was all about. There, a union fine, or the threat of it, expressly designed to force employees to "forego [their] statutory right not to honor the Union's picket line" was nevertheless held not to violate Section 8(b)(1)(A) even though such a fine was collectible, or collected, in court. The Supreme Court reasoned that 8(b)(1)(A) was not intended to apply to this kind of coercion. If, as is the case here, a Union does not violate 8(b)(1)(A) by imposing or threatening to impose a collectible fine, it is difficult to see how a presumably un-collectible fine can be violative of that Section. Even if, as the majority reasons, the employee concerned may not be sufficiently knowledgeable to evaluate the Union's fine as "un-collectible," and thus feel completely free to cross the picket line with impunity, he is plainly no more coerced than the full-fledged member.

A further consideration, ignored by my colleagues, impels me to this view. Each of the employees involved here, and in all other situations of which I am aware, was a member of the Union in all senses of the word before the strike began. Thus the fealty owed by a member to his union in effect came into play when the strike was authorized and began, and a "resignation" at that point was already a disloyal action from the standpoint of the Union and his

fellow members. Moreover, I cannot conceive of a case arising where a union would "fine" someone who had never been its member at all. It is only because the employees here were, in the eyes of the Union, and pursuant to the Union's constitution and bylaws, still Union members, that the fines would have any impact at all upon them. In this respect, whether employees are still members of the Union for purposes of imposition of a Union fine, the proviso to 8(b)(1)(A), in express terms, applies to a union's rules for acquisition or retention of membership."

For all these reasons, I would find no violation of Section 8(b)(1)(A) of the Act in a Union's fining a nonmember or a purported nonmember.

Dated, Washington, D.C.

GERALD A. BROWN, *Member*

NATIONAL LABOR RELATIONS BOARD

NOTICE TO MEMBERS

POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS
BOARD

An Agency of the United States Government.

WE WILL NOT restrain or coerce employees who had resigned from the Union and who, in the exercise of their rights guaranteed in Section 7 of the Act, worked at the Michoud plant during the September 1965 strike, by imposing fines or by threatening to seek or by seeking court enforcement of said fines as to such employees.

¹⁰ The cases cited by my colleagues in footnote 11 concern a Union's application of its membership rules to his job tenure, and thus are inapposite to the instant situation, where the rules pertain solely to another internal union matter.

WE WILL reimburse nonmembers abovementioned for any fines they may have paid to us for working during said strike.

WE WILL NOT in any like or related manner restrain or coerce employees in the exercise of rights guaranteed to them in Section 7 of the National Labor Relations Act.

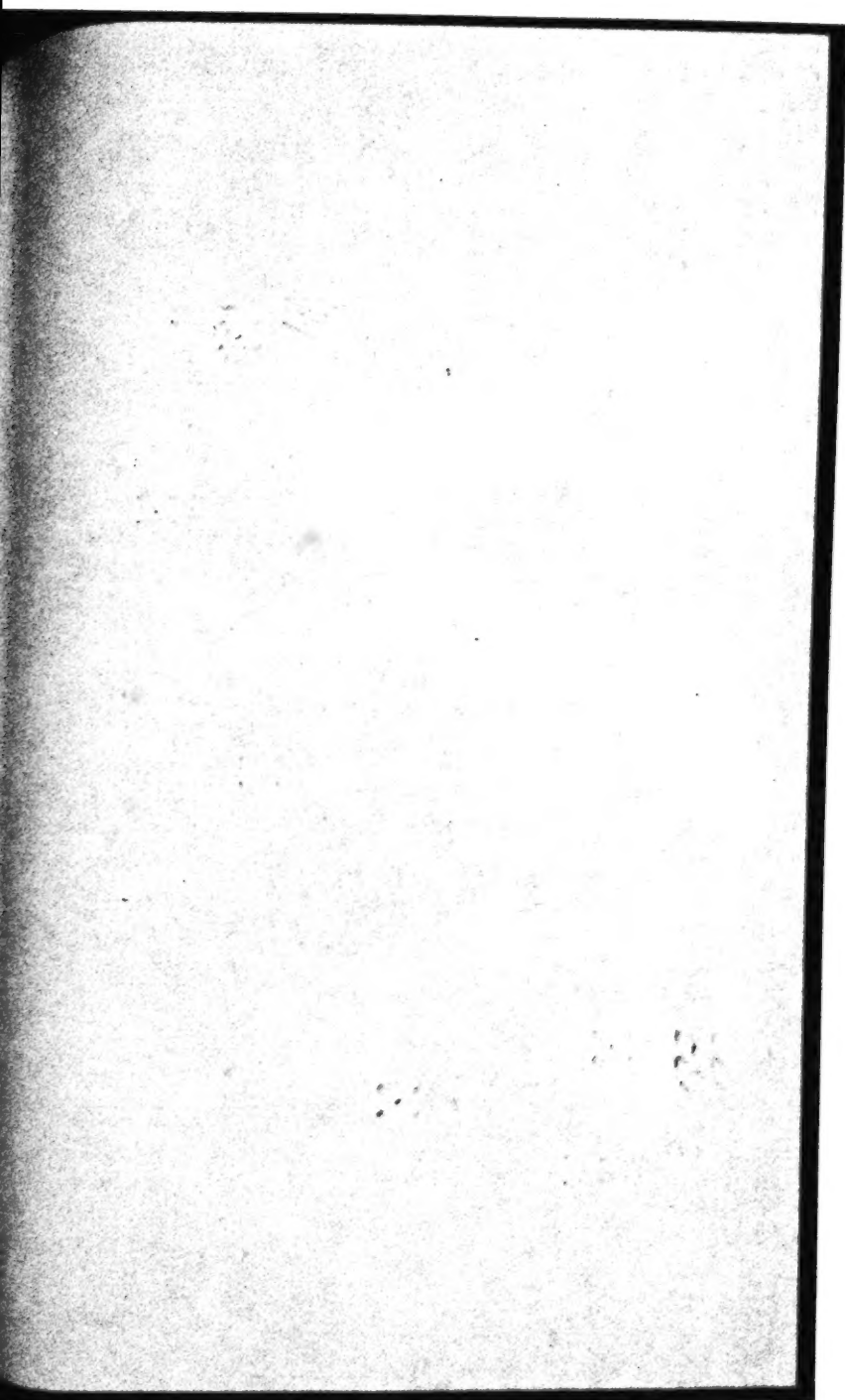
BOOSTER LODGE No. 405, INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS, AFL-CIO (Labor Organization)

Dated _____ **By** _____
(Representative) (Title)

This Is An Official Notice And Must Not Be Defaced By Anyone

This Notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material.

Any questions concerning this Notice or compliance with its provisions, may be directed to the Board's Office T6024 Federal Building (Loyola) 701 Loyola Ave., New Orleans, La. 70113. Telephone 504-527-6361.



In the Supreme Court of the United States

OCTOBER TERM, 1971

No. 71-711

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

**GRANITE STATE JOINT BOARD, TEXTILE WORKERS
UNION OF AMERICA, LOCAL 1029, AFL-CIO**

**ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR
THE FIRST CIRCUIT**

**SUPPLEMENTAL MEMORANDUM FOR THE
NATIONAL LABOR RELATIONS BOARD**

The petition for certiorari in this case refers to *Master Lodge No. 405, IAM v. National Labor Relations Board*, which was then pending before the Court of Appeals for the District of Columbia Circuit (Pet. 12, 5). On February 3, 1972, the court

of appeals handed down its decision in that case. The court's opinion is set forth in the appendix hereto.

Respectfully submitted.

ERWIN N. GRISWOLD,
Solicitor General.

PETER G. NASH,
General Counsel,
National Labor Relations Board.

FEBRUARY 1972.

APPENDIX

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 24,687

BOOSTER LODGE No. 405, INTERNATIONAL ASSOCIATION OF
MACHINISTS AND AEROSPACE WORKERS, AFL-CIO, PETITIONER
v.

* NATIONAL LABOR RELATIONS BOARD, RESPONDENT
THE BOEING COMPANY, INTERVENOR

No. 24,744

THE BOEING COMPANY, PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD, RESPONDENT
BOOSTER LODGE No. 405, INTERNATIONAL ASSOCIATION OF
MACHINISTS AND AEROSPACE WORKERS, AFL-CIO, INTERVENOR

Petitions for Review and Cross-Application for Enforcement
of Order of the National Labor Relations Board

Decided February 3, 1972

* * * *

Before **MACKINNON** and **WILKEY**, *Circuit Judges*, and **GOURLLEY**,* *Senior District Judge* for the Western District of Pennsylvania.

MACKINNON, *Circuit Judge*: In this case, we are called upon to examine the right of a labor organization, consonant with the provisions of the National Labor Relations Act (N.L.R.A.), to discipline those members who have crossed its picket line to work during an authorized strike. We must determine the effect which a member's resignation from the union, before, during, or after such conduct, has upon the union's disciplinary authority. We are also requested to consider the legal implications of the "reasonableness" of the fines imposed, where the union has threatened enforcement thereof, or has actually sought collection through legal means.

The essential facts are not in dispute. Booster Lodge No. 405, International Association of Machinists and Aerospace Workers, AFL-CIO (hereinafter sometimes referred to as the Union), and The Boeing Company, (hereinafter sometimes referred to as the Company), were parties to a collective bargaining agreement which was effective from May 16, 1963, through September 15, 1965.¹ Upon the expiration of

* Sitting by designation pursuant to 28 U.S.C. § 294(d) (1970).

¹ At the time of the execution of the 1963-1965 agreement, Booster Lodge No. 405 was not yet in existence. Boeing's Michoud, Louisiana plant, with which we are concerned in this case, was considered to be a "remote location" unit, identified with the "primary location" unit at Seattle-Renton, Washington. Therefore, the production and maintenance employees in the Michoud unit were represented by Aeronautical Industrial District Lodge No. 751, I.A.M., AFL-CIO, of Seattle, a signatory to the above-mentioned contract with Boeing. Booster Lodge No. 405 came into existence sometime later in 1963, with jurisdiction over the Michoud plant, but the bargaining agreement was not modified to reflect this occurrence.

the contract, the Union commenced a lawful strike against Boeing at its Michoud plant, as well as at various other locations. This work stoppage lasted 18 days. On October 2, 1965, a new bargaining agreement was signed, and the economic strikers returned to work the following day. Both the expired agreement and the newly executed contract contained maintenance-of-membership clauses, which required all new employees to notify both the Union and the Company within 40 days of their acceptance of employment if they elected not to become Union members. It also required those who were Union members to retain their membership during the contract term.

During the strike period, approximately 143 employees, of the 1900 production and maintenance employees represented by the Union at the Michoud plant, crossed the picket line and reported to work. All of these persons had been Union members during the 1963-1965 contract period. Some of the employees who worked during the strike made no attempt to resign from the Union during the strike. The remaining 119 submitted their voluntary resignations, in writing, to both the Union^{*} and the Company. About 61 of the employees who resigned did so *before* they crossed the picket line and returned to work. Another 58 resigned during the course of the strike, but *after* they had crossed the picket line in order to work. All resignations were submitted after the expiration of the 1963-1965 contract, and before the execution of the new agreement, and all were submitted prior to the imposition of any Union discipline. Union members had not been

^{*}The Union objected below to the fact that notices of resignation were sent to District Lodge 751, rather than to Booster Lodge 405. However, since Booster Lodge 405 was not a party to the original 1963-1965 agreement, as explained in footnote 1, *supra*, it is clear that the employees who notified District Lodge 751 were attempting to comply with the applicable contractual requirements. Furthermore, District Lodge 751 notified Booster Lodge 405 of all resignations it received. We thus see no validity in the objection.

warned prior to the strike that disciplinary measures could, or would, be taken against those who crossed the picket line to work, nor had any such discipline been imposed on members by Booster Lodge 405 prior to this time.

In late October or early November of 1965, the Union notified all members and former members who had crossed the picket line to work during the strike that charges had been preferred against them under the International Union Constitution, for "Improper Conduct of a Member" due to their having "accept[ed] employment . . . in an establishment where a strike exist[ed]." They were advised of the dates of their Union trials, which were to be held even in their absence if they did not appear, and they were notified of their right to be represented by any counsel who was a member of the International Association of Machinists and Aerospace Workers. Pursuant to the International Union Constitution provision which permitted the imposition of disciplinary measures, including "reprimand, fine, suspension, or expulsion from membership, or any lesser penalty or combination," where a member had been found guilty of misconduct after notice and a hearing, fines were imposed on all employees who had worked during the strike. No distinction was drawn between those persons who had resigned from the Union during the course of the strike and those who had remained Union members.

Employees who did not appear for trial before the Union Trial Committee and those who appeared but were found guilty were fined \$450.00 each, the amount determined by the membership, and they were barred from holding a Union office for a period of 5 years. The fines of about 35 employees who appeared for trial, apologized, and pledged loyalty to the Union, were reduced to 50 percent of the earnings they received during the strike.⁹ In some of these cases the time

⁹ Employees who worked during the strike earned between \$2.38 and \$3.63 per hour, or between \$95 and \$145 per 40-hour

period during which these persons were prohibited from holding Union office was decreased to a period based upon the number of days of strikebreaking activity each respective person had engaged in. None of the disciplined individuals processed intra-Union appeals.

Although none of the \$450.00 fines has been paid, reduced fines have been paid in some instances. The Union has sent out written notices that the matter has been referred to an attorney for collection, that suit will be filed if the fines remain unpaid, and that reduced fines will be reinstated to \$450.00 in the event of nonpayment. The Union has also filed suit against nine individual employees to collect the fines (plus attorney's fees and interest). None of these suits has yet been resolved.

On February 18, 1966, the Company filed a charge with the N.L.R.B., alleging that the Union had violated Section 8(b)(1)(A) of the N.L.R.A., and a complaint was issued by the

week. In some instances, earnings during the strike period were supplemented by the inclusion of bonus or premium rates for weekend and overtime work.

29 U.S.C. § 158(b)(1)(A) (1970), which provides:

(b) It shall be an unfair labor practice for a labor organization or its agents—

(1) to restrain or coerce (A) employees in the exercise of the rights guaranteed in section 157 of this title: *Provided*, That this paragraph shall not impair the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership therein;

29 U.S.C. § 157 (1970) provides:

Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any

General Counsel. The Labor Board decided that the Union violated section 8(b)(1)(A): (1) by fining those employees who had resigned from the Union before they returned to work during the strike; and (2) by disciplining those employees who had resigned after returning to work, to the extent that the fines were imposed for their working during the strike after their resignations. The Board further found that the Union did not violate the Act (3) by fining members for crossing the picket line to work, and by fining those employees who had resigned after returning to work during the strike, for work they performed during the strike prior to their resignations.

Finally, the Board determined (4) that it was not the intention of Congress to have the N.L.R.B. regulate the size of such disciplinary fines and establish standards with respect to their reasonableness, and it dismissed the claim that otherwise legal fines may be rendered violative of the N.L.R.A. if unreasonably large. A cease and desist order was issued, and the Union was ordered to refund any fines collected from employees who had resigned before returning to work. The Union was also required to refund a pro rata portion of those fines collected from employees who had resigned after first engaging in work during the strike, so that the part of the fines retained would only reflect pre-resignation conduct.

Booster Lodge 405 challenges the Board's conclusion that a mid-strike resignation from a union relieves an individual from the burden of union discipline with respect to his post-resignation activity, while The Boeing Company contends that the N.L.R.B. should have examined the reasonableness

or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 158(a) (3) of this title.

of the fines imposed by the Union. The Board seeks enforcement of its order.

Part I of this opinion discusses the legality of the imposition of the disciplinary fines by the Union in response to the strikebreaking by the approximately 143 employees involved. Part II considers the effect the reasonableness of the fines has upon their propriety under the N.L.R.A., and the proper function of the N.L.R.B. in this area. Finally, Part III deals with the propriety of the Board's remedial order.

I

The Legality of the Disciplinary Fines

A. The Employees Who Did Not Resign

As early as 1954, in *Minneapolis Star and Tribune Co.*, 109 NLRB 727 (1954), the Labor Board held that a union did not violate Section 8(b)(1)(A) of the Act by imposing a fine on a member for his failure to perform picket duty during the course of an authorized strike. The Board declared that the *proviso* to 8(b)(1)(A)^{*} precluded any interference by it with the internal affairs of a labor organization in such a situation. In *N.L.R.B. v. Allis-Chalmers Manufacturing Co.*, 388 U.S. 175 (1967), a divided Supreme Court similarly determined that a union did not violate the N.L.R.A. when it imposed, and attempted to enforce through court action, reasonable fines against members for their failure to honor an authorized picket line. Instead of relying upon the express language of the *proviso*, however, the Supreme Court carefully analyzed the entire legislative history of Section 8(b)(1)(A), and it concluded that Congress did not intend to prohibit such internal union discipline by the prohibition

^{*} See n. 4, *supra*.

against "restraint" or "coercion." See 388 U.S. at 183-195.* The Court noted:

National labor policy has been built on the premise that by pooling their economic strength and acting through a labor organization freely chosen by the majority, the employees of an appropriate unit have the most effective means of bargaining for improvements in wages, hours, and working conditions. The policy therefore extinguishes the individual employee's power to order his own relations with his employer and creates a power vested in the chosen representative to act in the interests of all employees. "Congress has seen fit to clothe the bargaining representative with powers comparable to those possessed by a legislative body both to create and restrict the rights of those whom it represents . . ."

388 U.S. at 180. See *J. I. Case Co. v. N.L.R.B.*, 321 U.S. 332 (1944). The Court further stated:

Integral to this federal labor policy has been the power in the chosen union to protect against erosion [of] its status under that policy through reasonable discipline of members who violate rules and regulations governing membership. That power is particularly vital when the members engage in strikes. The economic strike against the employer is the ultimate weapon in labor's arsenal for achieving agreement upon its terms, and "[t]he power to fine or expel strikebreakers is essential if the union is to be an effective bargaining agent . . ."

388 U.S. at 181.

In more recent decisions, the Supreme Court has reaffirmed the right of a union to impose and enforce reasonable fines against members who engage in strikebreaking activities. In *Scofield v. N.L.R.B.*, 394 U.S. 423, 428-430 (1969), the Court emphasized the right of a union to enforce a properly

*For another good analysis of the legislative history of § 8(b)(1)(A), see *National Maritime Union*, 78 NLRB 971, 982-987 (1948), *enfd.*, 175 F.2d 686 (2nd Cir. 1949), *cert. denied*, 338 U.S. 954 (1950).

adopted rule which reflects a legitimate union interest, impairs no statutory labor policy, and is reasonably enforced against union members. See *N.L.R.B. v. Marine Workers*, 391 U.S. 418, 423 (1968). See also *Rocket Freight Lines Co. v. N.L.R.B.*, 427 F.2d 202, 205-206 (10th Cir.), cert. denied, 400 U.S. 942 (1970); Silard, *Labor Board Regulation of Union Discipline After Allis-Chalmers, Marine Workers and Scofield*, 38 GEO. WASH. L. REV. 187 (1969). In light of these developments,⁷ it is clear that the Union acted within the sphere of its lawful authority when it decided to impose fines on the 24 strikebreaking members who did not resign from the Union.⁸ Similarly, the Union's threats to enforce these fines, as well as its actual efforts to achieve court enforcement thereof, were not prohibited by the N.L.R.A. However, a more difficult question arises with respect to the 119 employees who resigned from the Union during the strike period.

⁷ The Company has asked this court to overrule *Allis-Chalmers* in order to force reconsideration of the union discipline area by the Supreme Court, but that is not our function. We recognize that "the Supreme Court should retain the exclusive privilege of overruling its own decisions, save perhaps when opinions already delivered have created a near certainty that only the occasion is needed for pronouncement of the doom." *Salerno v. American League of Professional Baseball Clubs*, 429 F.2d 1003, 1005 (2nd Cir. 1970), cert. denied, 400 U.S. 1001 (1971). In light of *Scofield* and *Marine Workers*, any argument for such reconsideration must be addressed to the Supreme Court itself. See *U. S. Gypsum Co. v. Steelworkers*, 384 F.2d 38, 42-44 (5th Cir. 1967), cert. denied, 389 U.S. 1042 (1968); *United States v. Ullman*, 221 F.2d 760, 762 (2nd Cir. 1955), aff'd., 350 U.S. 422 (1956).

⁸ See Part II, *infra*, regarding the effect of the "reasonableness" of the fines imposed on their legality under § 8(b) (1) (A).

B. The Employees Who Did Resign

As the Supreme Court recognized in *Allis-Chalmers*, when Section 8(b)(1)(A) was enacted, "Congress was operating within the context of the 'contract theory' of the union-member relationship which widely prevailed at that time." *N.L.R.B. v. Allis-Chalmers Mfg. Co.*, *supra*, 388 U.S. at 192. See *International Association of Machinists v. Gonzales*, 356 U.S. 617, 618 (1958). Under this theory union membership was deemed in effect to create a "contract" between the labor organization and the member which imposed certain obligations on the member, and the decision emphasized "that 'The courts' role is but to enforce the contract.'" 388 U.S. at 182. See Summers, *The Law of Union Discipline: What the Courts Do in Fact*, 70 *YALE L. J.* 175, 180 (1960). It is, therefore, obvious that membership in the labor organization is the *sine qua non* to the authority of a union to impose disciplinary burdens upon the employees it represents. This has been widely recognized.

In *Allis-Chalmers*, the Court expressly limited its holding to "reasonable discipline of members who violate rules and regulations governing membership." *N.L.R.B. v. Allis-Chalmers Mfg. Co. supra*, 388 U.S. at 181 (emphasis supplied). See also *id.* at 195-196.* The Labor Board specifically

* In *Allis-Chalmers*, all of the persons disciplined by the union enjoyed full membership status. Thus the Court was not required to decide what obligations vis-a-vis the union a person would be under where he was not a full member, but only a "limited member" who merely paid dues and fees in accordance with an appropriate union-security agreement. 388 U.S. at 197. See 29 U.S.C. § 158(a) (3) (1970); *N.L.R.B. v. General Motors Corp.*, 373 U.S. 734, 742 (1963). Since the contracts involved in the instant case only contained maintenance-of-membership provisions, employees were either full members or total non-members. For this reason, we too intimate no view regarding the obligations which a union may lawfully impose on a person whose only ties with the labor organization are his payment of dues and fees.

recognized this indispensable prerequisite in *Scofield*, 145 NLRB 1097, 1104 (1964), where it noted that "[a] union rule that a member is subject to a fine if he [violates a valid union rule] does not mean that he is subject to such a fine as an employee." (emphasis in original) This membership requirement for union disciplinary authority was affirmed by the Supreme Court in *Scofield v. N.L.R.B.*, 394 U.S. 423, 429 n. 5:

As an employee, [an individual] may be a "good, bad, or indifferent" member so long as he meets the financial obligations of the union security contract. . . . But as a union member, so long as he chooses to remain one, he is subject to union discipline. (emphasis supplied)

See 394 U.S. at 435. Thus the Court recognized that "union members . . . are free to leave the union and escape the [union] rule." *Id.* at 430.¹⁰ It is therefore apparent that *Booster Lodge 405 only had the authority to discipline those employees who were in fact Union members at the time they engaged in the complained of activity.*

Approximately 58 of the employees who worked during the strike submitted their resignations to the Union after they

¹⁰ "[N]o employee is subject to union rules if he chooses to forego the privileges and duties of union membership." Silard, *Labor Board Regulation of Union Discipline After Allis-Chalmers, Marine Workers and Scofield*, 38 Geo. Wash. L. Rev. 187, 190 (1969). See *International Association of Machinists and Aerospace Workers, Local Lodge 504*, 185 NLRB No. 22, 75 LRRM 1008, (1970). Since unions are only authorized to impose discipline where legitimate internal affairs are concerned, *N.L.R.B. v. Allis-Chalmers Mfg. Co.*, *supra*; *Scofield v. N.L.R.B.*, *supra*; *N.L.R.B. v. Marine Workers*, 391 U.S. 418, 424 (1968); *Local 138, International Union of Operating Engineers*, 148 NLRB 679, 682 (1964), it is clear that any effort to fine non-members would constitute an attempt to affect external activities, "an area in which Congress did not intend to permit such union regulation. This was correctly recognized by the N.L.R.B. in this case.

had already engaged in some of the conduct proscribed by the International Union Constitution. In light of the above discussion regarding union authority over action undertaken by full members, we must concur in the Board's determination that the Union did not violate Section 8(b)(1)(A) *so far as its imposition of disciplinary fines concerned this pre-resignation conduct*. The fact that the fines were not officially imposed for these pre-resignation breaches of Union regulations until after the strikebreakers had resigned, in no way negated the authority of the Union over these persons with respect to these acts, as the N.L.R.B. properly recognized.

The provisions of a contract are enforceable, and a cause of action can be brought upon them, even after the expiration or termination of the agreement. The rights and duties created by an agreement are extinguished only prospectively by the termination thereof. Thus the termination of some employees' membership here did not affect the Union's subsequent assertion of rights which had accrued to the Union during their earlier period of membership, such as the right to discipline the employees for prior strikebreaking. The effect of these employees' resignations was only to extinguish the Union's future authority over them.

Booster Lodge No. 405, International Association of Machinists and Aerospace Workers, AFL-CIO, 185 NLRB No. 23, 1970 OCH NLRB ¶ 22,259, at p. 28,693 (1970).¹¹

C. Fines Imposed for Post-resignation Conduct

An extremely difficult question is presented with respect to the fines which were imposed upon employees for their

¹¹ A resignation acts to terminate the existing relationship so far as the incursion of future obligations is concerned. Previously established or perfected liabilities survive the termination. See 5A CORBIN, CONTRACTS § 1229, pp. 506-510 (1934).

post-resignation conduct." Booster Lodge 405 has made a sophisticated argument which would expose persons who were members at the commencement of a particular strike to union discipline with respect to any strikebreaking action undertaken during that specific work stoppage. Although it concedes that such a restriction is not contained in any of the express language of the International Union Constitution or By-laws, the Union urges this court to "flesh out" such documents by imposing such an obligation by implication. We must decline this invitation.

It must be emphasized that in situations like this, while "the function of the court is to determine, as far as is possible, the intention of the contracting parties and to give legal effect thereto,"¹² it is generally recognized that courts will not usually imply offenses not specified in a union's constitution or by-laws.¹³ We believe that this latter consideration is controlling with respect to the instant case. As the Union recognizes, there is nothing in the record which evidences any intention on the part of the approximately 119 persons who resigned during the strike in question that their initial acceptance of Union membership would impose upon them the type of continuing obligation which Booster Lodge 405 now asks this court to impose. Furthermore, the very fact that they resigned during this period, in an obvious attempt to escape the disciplinary authority of the Union, belies this proposed line of reasoning.

¹² This would, of course, include the approximately 61 persons who resigned from the Union *before* engaging in any strikebreaking activity, as well as the 58 persons discussed previously, who resigned during the period of their strikebreaking, so far as their actions undertaken *after* they effectively resigned are concerned.

¹³ 1 CORBIN, *CONTRACTS* § 95, p. 396 (1963).

¹⁴ Summers, *Legal Limitations on Union Discipline*, 64 HARV. L. REV. 1049, 1059-1061 (1951), and see cases cited therein.

In addition, an extremely important national labor policy militates against the imposition of such an implied obligation. Section 7 of the N.L.R.B.¹¹ expressly protects the right of any employee to refrain from any or all of the concerted activities guaranteed to employees under the Act. While *Allis-Chalmers* and *Scofield* recognized the legality of certain express union provisions limiting an employee's freedom where he had voluntarily accepted full union membership, nothing in those decisions supports the Union's theory of implied, post-resignation restrictions. In fact, language in *Scofield* expressly indicates otherwise. The Supreme Court only recognized the right of a union "to enforce a properly adopted rule which reflects a legitimate union interest, impairs no policy Congress has imbedded in the labor laws, and is reasonably enforced against union members who are free to leave the union and escape the rule." *Scofield v. N.L.R.B.*, *supra*, 394 U.S. at 430 (emphasis supplied). As the Board properly concluded below, after resignation, "[b]oth the member's duty of fidelity and the union's corresponding right to discipline him for breach of that duty are extinguished." *Booster Lodge No. 405, International Association of Machinists and Aerospace Workers, AFL-CIO*, *supra*, 1970 CCH NLRB ¶ 22,259, at p. 28,692.

The Union has relied heavily upon the First Circuit's holding in *N.L.R.B. v. Granite State Joint Board, Textile Workers Union, Local 1029*, 446 F.2d 369 (1st Cir. 1971), but we believe that the decision is inapposite to the present fact situation. Although the court in *Granite State* upheld the right of the union involved to impose fines on strike-breakers for post-resignation activity, it emphasized that a specific set of facts was present which it believed rendered such a result equitable, and it specifically recognized that these considerations were not present with respect to the

¹¹ 29 U.S.C. § 157 (1970). See n. 4, *supra*.

instant Booster Lodge 405 case.¹⁴ In *Granite State*, the Board conceded that all of the fined employees had voted in favor of the strike in question.¹⁵ It is also important to note that the fines had not been imposed pursuant to a general provision in the union constitution, as here, but rather in accordance with a specific proclamation which had been unanimously adopted by the membership after the work stoppage commenced. See 446 F.2d at 370, 372 n. 5. Furthermore, all of those who were disciplined in *Granite State* had been expressly pre-warned of possible punishment for strike-breaking,¹⁶ while the employees with whom we are herein concerned received no such pre-strikebreaking notification. Because of these distinguishing facts, we refuse to apply the rationale of *Granite State* to the instant factual situation.¹⁷ The strong equities which weighed in favor of the union there, are clearly not present here. In fact, their very absence powerfully supports the result which we have accepted.

Since the International Union Constitution and By-laws contained no express restriction upon a member's right to resign, it is clear that the strikebreaker/employees were free to resign at will, subject only to their being bound by any permissible collective bargaining agreement provision limiting this right. *Local Union 621, United Rubber, Cork, Linoleum and Plastic Workers of America*, 167 NLRB 610 (1967); *Communications Workers v. N.L.R.B.*, 215 F.2d 835 (2d Cir. 1954); *N.L.R.B. v. Mechanical and Allied Produc-*

¹⁴ See 446 F.2d at 372 n. 5, wherein the First Circuit distinguished the facts present in the instant case from those present in *Granite State*.

¹⁵ 446 F.2d at 370 n. 2. In the present case, there is no evidence that the disciplined strikebreakers voted to strike.

¹⁶ 446 F.2d at 371.

¹⁷ To the extent that the First Circuit's decision in *Granite State* may be read to support Booster Lodge 405's position here, we respectfully decline to follow it.

tion Workers, Local 444, 427 F.2d 883 (1st Cir. 1970). Furthermore, since the resignations all occurred after the termination of the 1963-1965 agreement and before the execution of the new contract, the maintenance-of-membership provision was not applicable to limit this right either. *N.L.R.B. v. Mechanical and Allied Production Workers, Local 444, supra*, 427 F.2d at 884-885; *N.L.R.B. v. Granite State Joint Board, Textile Workers Union, Local 1029, supra*, 446 F.2d at 372. Under these circumstances we concur in the reasoning of the Second Circuit in *Communications Workers v. N.L.R.B., supra*, 215 F.2d at 838:

We agree that the proviso [to § 8(b)(1)(A)] protects the Union's right to make its own rules with respect to membership, but assuming, *arguendo*, that a rule wholly prohibiting voluntary resignations would be valid, we think that in the absence of any rule on the subject of voluntary resignation, the *proviso* is inapplicable. Concededly the Union Constitution and by-laws are absolutely silent as to whether a member can voluntarily resign. Hence we think that the common law doctrine on withdrawal from voluntary associations is apposite. Under that doctrine, a member of a voluntary association is free to resign at will, subject of course to any financial obligations due and owing the association. [citations omitted]"

For the reasons set out above, we conclude that the Labor Board correctly determined that "the Union's right to discipline employees terminated upon the employees' sub-

"We express no opinion herein concerning the legality of any union constitution or by-law provision expressly limiting the right of a member to resign during the period of an on-going strike. Compare *N.L.R.B. v. International Union, U.A.W.*, 320 F.2d 12 (1st Cir. 1963). We similarly intimate no view regarding the legality of any such provision expressly imposing a continuing obligation on any resigning member to refrain from strikebreaking during a work stoppage which was properly commenced prior to the time of the resignation.

mission of their letters of resignation [, thus t]he attempted imposition of discipline for subsequent conduct was beyond the powers of the Union." *Booster Lodge No. 405, International Association of Machinists and Aerospace Workers, AFL-CIO, supra*, 1970 CCH NLRB ¶ 22,259, at p. 28,692.²¹ We therefore affirm the Board's finding that the Union violated Section 8(b)(1)(A) of the N.L.R.A. by imposing fines upon employees, and by threatening or attempting enforcement of such fines, because of those employees' post-resignation conduct in working at the Company plant during the authorized work stoppage.²² Since the imposition of fines under such circumstances violated the policies underlying

²¹ It is clear, as the Board has recognized, that the "resignations were effective upon receipt of notification by the Union." *Local 1012, U.E.*, 187 NLRB No. 46, 76 LRRM 1038 (1970) (emphasis supplied). See *Belle-Mec, Inc.*, 81 NLRB 6, 7 (1949); *Koenig Bros.*, 108 NLRB 804 (1954); *N.L.R.B. v. Vapor Recovery Systems Co.*, 311 F.2d 782, 785 (9th Cir. 1962). Any questions which may possibly arise concerning the effective date of particular employee resignations can either be determined by the Board on remand of the reasonableness issue, in accordance with Part II of this opinion, or, if the N.L.R.B. prefers, such problems may be left for resolution at the compliance stage or in supplemental proceedings. *United Steelworkers of America, Local 5571 v. N.L.R.B.*, 130 U.S. App. D.C. 339, 373, 401 F.2d 434, 438 (1968), cert. denied, 395 U.S. 946 (1969). See *American Fire Apparatus Co. v. N.L.R.B.*, 380 F.2d 1005, 1007 (8th Cir. 1967); *N.L.R.B. v. International Longshoremen's Union, Local 12*, 378 F.2d 125, 130 (9th Cir. 1967), cert. denied, 389 U.S. 846 (1967); *N.L.R.B. v. Darling & Co.*, 420 F.2d 63, 66 (7th Cir. 1970).

²² This would include the Union's effort not only to discipline those employees who had resigned from membership before engaging in any strikebreaking, but also the organization's imposition of fines on those who resigned during the period of their strikebreaking, to the extent that such discipline was imposed as a result of their post-resignation conduct.

the N.L.R.A. and had effects outside the area of internal Union affairs, they were clearly "coercive" within the meaning of Section 8(b)(1)(A). See *N.L.R.B. v. Marine Workers*, 391 U.S. 418 (1968); *District 50, Local 12419*, 176 NLRB No. 89, 71 LRRM 1311 (1969); *Local 138, International Union of Operating Engineers, AFL-CIO*, 148 NLRB 679 (1964). See also *International Molders and Allied Workers, Local 125*, 178 NLRB 208, 72 LRRM 1049 (1969), *enfd.*, 442 F.2d 92 (7th Cir. 1971).²² We thus grant enforcement of the N.L.R.B.'s cease and desist order so far as it concerns the imposition of fines for post-resignation conduct.²³

²² The fact that the fines imposed upon the employees for conduct undertaken after they had severed their ties with the Union might not have been collectable in a subsequent collection suit, does not detract from the fact of their coerciveness at the time they were imposed. See *N.L.R.B. v. American Bakery and Confectionery Workers, Local 300*, 411 F.2d 1122, 1128 (7th Cir. 1969). See also *Local Union No. 167, Progressive Mine Workers of America v. N.L.R.B.*, 422 F.2d 538, 542 (7th Cir.), *cert. denied*, 399 U.S. 905 (1970).

²³ This result also supports the Board's conclusion that the Union fines which were imposed upon the approximately 35 persons who apologized and pledged loyalty, should be confined to 50% of their *pre-resignation* strikebreaking earnings, since any attempt to enforce the discipline with respect to post-resignation remuneration could be reasonably construed as an effort to punish the very conduct which we have held the Union may not so regulate. "While it is true that [the Board's] retroactive order might afford [these] employees a better position . . . the Board can hardly be said to be effectuating policies beyond the purposes of the Act by resolving the doubt against the party who violated the Act." *Leeds & Northrup Co. v. N.L.R.B.*, 391 F.2d 874, 880 (3rd Cir. 1968). We therefore grant enforcement to that part of the Board's order which limits enforcement of such fines to 50% of pre-resignation earnings, which we believe results in the enforcement of a reasonable fine. Similarly, the prohibition against holding Union office, which, with respect to these persons, was calcu-

II

The Board's Duty to Determine the Reasonableness of Fines

In its decision below, the N.L.R.B. relied upon a companion case, *International Association of Machinists and Aerospace Workers, Local 504* [Arrow Development Co.], 185 NLRB No. 22, 75 LRRM 1008 (1970),²² in concluding that a fine's "reasonableness" has no effect upon its legality under the N.L.R.A. This conclusion was based upon the Board's belief that Congress did not intend to empower the Labor Board with the authority to examine the severity of union discipline when ascertaining its legality, and it indicated that it thought that local courts were the most logical tribunals for the establishment of standards of reasonableness. The Board therefore refused to examine the question of reasonableness in the present case, despite an express determination by the Trial Examiner that the imposed fines were impermissibly excessive. We reject the position of the Board,²³ and remand the case for further proceedings in conformity with the views set out below."

lated on a pro rata basis reflecting the number of strike-breaking days each worked, must necessarily also be restricted so that the length of such prohibitions will only reflect pre-resignation activity. See expanded discussion of the Board's remedial authority in Part III of this opinion, *infra*.

²² Appeal is now pending before the Ninth Circuit, *sub nom. David O'Reilly v. N.L.R.B.*, No. 26,892.

²³ We emphasize the fact that in the instant case, the Union not only threatened to utilize court action to enforce the fines imposed, but in several instances, actual collection suits were begun. Under such circumstances, we believe that the reasonableness of the fines in question is highly relevant to the question of their legality under § 8(b)(1)(A). We intimate no view regarding the need for an examination of the reasonableness of disciplinary fines where the only enforcement mechanism contemplated by the union involves the expulsion of the individual from the union.

²⁴ Although the Union has argued that the aggrieved employees should not have the right to have a Board determina-

The Board's belief that it does not have the obligation of examining the reasonableness of union fines in Section 8(b)(1)(A) proceedings is based upon a clear misconception of the law and the Supreme Court's relevant decisions. In *Allis-Chalmers*, the Court stated:

It is no answer that the proviso to § 8(b)(1)(A) preserves to the union the power to expel the offending member. Where the union is strong and membership therefore valuable, to require expulsion of the member visits a far more severe penalty upon the member than a reasonable fine.

N.L.R.B. v. Allis-Chalmers Mfg. Co., *supra*, 388 U.S. at 183 (emphasis supplied). The Court further recognized that "the proviso preserves the rights of unions to impose fines, as a lesser penalty than expulsion . . ." 388 U.S. at 191-192 (emphasis supplied).²² This implicitly recognized that, for a

tion concerning the reasonableness of the fines imposed, due to the fact that they have not exhausted all available internal Union remedies, we reject this contention. An individual need not, in all cases, exhaust all internal union procedures before seeking the services of the N.L.R.B. See *N.L.R.B. v. Marine Workers*, 391 U.S. 418 (1968); *Local 138, International Union of Operating Engineers*, 148 NLRB 679 (1964). The imposition of such a requirement in this case concerning the reasonableness issue would not, in our opinion, best serve the interests of justice or further the objectives of the N.L.R.A. The issue here involves public policy and thus transcends the pure internal affairs of the Union. 391 U.S. at 422-423.

²² Justice White, in his concurring opinion, observed:

[S]ince expulsion would in many cases—certainly in this one involving a strong union—be a far more coercive technique for enforcing a union rule and for collecting a reasonable fine than the threat of court enforcement, there is no basis for thinking that Congress, having accepted expulsion as a permissible technique to enforce a rule in derogation of § 7 rights, nevertheless intended to bar enforcement by another method [court action] which may be far less coercive.

disciplinary fine to be less coercive than expulsion from the union, the fine imposed must be a "reasonable" one, for it is intuitively obvious that enforcement of a grossly excessive fine might visit a far greater burden upon an individual than would mere expulsion." The Supreme Court also expressly recognized this fact in its recent *Scofield* decision, wherein it concluded that the enforcement of a proper union rule "by reasonable fines does not constitute the restraint or coercion proscribed by § 8(b)(1)(A)." *Scofield v. N.L.R.B.*, *supra*, 394 U.S. at 436 (emphasis supplied). The *Scofield* Court emphasized that under *Allis-Chalmers*, "[a] union rule, duly adopted and not the arbitrary fiat of a union officer, forbidding the crossing of a picket line during a strike [is] . . . enforceable against voluntary union members by expulsion or a reasonable fine." 394 U.S. at 428 (emphasis supplied). In light of the Court's emphasis on the requirement of "reasonable fines" if a union is to avoid a violation of the Act in these circumstances, we must conclude that the imposition of an unreasonably large fine, at least where the union threatens or actually attempts court enforcement of

388 U.S. at 198 (emphasis supplied). It is also informative to note the express interpretation given to the *Allis-Chalmers* opinion by the dissenting members of the Court: "[T]he Court's holding boils down to this: a court-enforced reasonable fine for nonparticipation in a strike does not 'restrain or coerce' an employee in the exercise of his right not to participate in the strike." 388 U.S. at 200-201 (dissenting opinion of Black, J.) (emphasis supplied).

"Even the attorney who argued *Allis-Chalmers* for the union before the Supreme Court has recognized this limitation in the Court's decision. He has indicated that *Allis-Chalmers* only determined that "a union suit to collect a reasonable fine imposed on a member for violating a 'no strikebreaking' rule does not violate section 8(b)(1)." Silard, *Labor Board Regulation of Union Discipline After Allis-Chalmers*, *Marine Workers and Scofield*, 88 GEO. WASH. L. REV. 187, 190 (1969) (emphasis supplied).

the fine, may be coercive and restraining within the meaning of section 8(b)(1)(A).

Since the imposition of an unreasonably excessive disciplinary fine is violative of Section 8(b)(1)(A), it is clearly the obligation of the N.L.R.B. to resolve the question of reasonableness where such an issue is appropriately raised. The Board asserts that such a result might cause conflicts between it and state courts which attempt to examine the reasonableness issue in actions to collect such fines. However, we do not believe that this possible problem detracts from the Board's obligation under the N.L.R.A.²²

We recognize that "state courts have been adjudicating internal union disputes for more than 60 years." Summers, *The Law of Union Discipline: What the Courts Do in Fact*, 70 YALE L.J. 175 (1960).²³ We further acknowledge the fact that "the state courts, in reviewing the imposition of union discipline, find ways to strike down 'discipline [which] involves a severe [monetary] hardship.'"²⁴ However, these

²² The question of the extent to which union action for enforcement of disciplinary penalties is pre-empted by federal labor law is not before this court, and we intimate no view concerning the resolution of this complex issue. Compare *San Diego Building Trades Council v. Garmon*, 359 U.S. 236, 245 (1959), with *Linn v. United Plant Guard Workers, Local 114*, 383 U.S. 53 (1966). See *N.L.R.B. v. Allis-Chalmers Mfg. Co.*, *supra*, 388 U.S. at 197 n. 37.

²³ See cases cited 70 YALE L. J. at 175 n. 3. "Unless the rule or its enforcement impinges on some policy of the federal labor law, the regulation of the relationship between union and employee is a contractual matter governed by local law." *Seaford v. N.L.R.B.*, *supra*, 394 U.S. at 426 n. 3.

²⁴ *N.L.R.B. v. Allis-Chalmers Mfg. Co.*, *supra*, 388 U.S. at 196 n. 32, quoting from Summers, *Legal Limitations on Union Discipline*, 64 HARV. L. REV. 1049, 1078 (1951). For some examples of state court willingness to examine the reasonableness of union disciplinary fines, see: *North Jersey Newspaper*

considerations do not relieve the N.L.R.B. of its duties under the N.L.R.A. "[T]he business of the Board, among other things, is to adjudicate and remedy unfair labor practices. Its authority to do so is not 'affected by any other means of adjustment or prevention that has been or may be established by agreement, law, or otherwise . . . ' § 10(a), . . . 29 U.S.C. § 160(a)." *N.L.R.B. v. Strong*, 393 U.S. 357, 360 (1969). See *Office and Professional Employees International Union, Local 425 v. N.L.R.B.*, 136 U.S. App. D.C. 12, 15-16, 419 F.2d 314, 317-318 (1969).²² Furthermore, the fact that some state courts might not permit enforcement of excessive fines in a collection action by the union, does not detract from their coerciveness, or the need for N.L.R.B. action. *N.L.R.B. v. American Bakery and Confectionery Workers, Local 300*, 411 F.2d 1122, 1126

Guild, Local 173 v. Rakos, 110 N.J. Super 77, 74 LRRM 2487 (N.J. Sup. Ct., App. Div. 1970); *L.A. Newspaper Guild, Local 69 v. Armenta*, 73 LRRM 2078 (Cal. Sup. Ct., App. Dept. 1969); *Walsh v. Communications Workers of America*, 75 LRRM 2629, 2632 (Md. Ct. of App. 1970); *McCauley v. Federation of Musicians, Local 294*, 26 LRRM 2304 (Pa. Ct. of Com. Pla. 1950).

²² Although the Union has cited language in *U.O.P. Norplex, Div. of Universal Oil Products Co. v. N.L.R.B.*, 445 F.2d 155, 158 (7th Cir. 1971), stating that "[t]he reasonableness of . . . fines is a matter for the state court to determine should the Union seek judicial enforcement of the fines," in support of its contention that this issue is outside the scope of the Board's authority, this statement is clearly not apposite to the present case. The Court was there concerned with whether the subject of internal union fines was a mandatory subject for collective bargaining, and it recognized that "even if the fines were excessive, the remedy would be for the company to file an 8(b)(1)(A) charge against the union, not to try to convert an otherwise non-mandatory subject of bargaining into a 'term or condition of employment.'" 445 F.2d at 158 n. 7 (emphasis supplied). The Boeing Company followed the exact procedure suggested.

(7th Cir. 1969). See *Local Union No. 167, Progressive Mine Workers of America v. N.L.R.B.*, 422 F.2d 538, 542 (7th Cir.), cert. denied, 399 U.S. 905 (1970).

Other factors also support the conclusion that Board intervention is authorized in this very limited area, despite the historical activity of state courts and the reluctance of the 80th Congress to interfere in the internal affairs of unions. There is something to be said for having the reasonableness of fines determined by standards that are as nearly uniform as national standards promulgated by the N.L.R.B. can be. Furthermore, access to the Labor Board is more readily available than meaningful access to state courts. Before the Board, the employee is represented by the General Counsel, and the agency bears the expense of the litigation. If the same employee wants a complete resolution of the reasonableness issue in a state court collection action brought by the union, he must be prepared to accept at least some financial burden. "The danger that the legal rights of a disciplined member will go by default because of the cost of asserting them in court is obvious . . ." Summers, *The Law of Union Discipline: What the Courts Do in Fact*, 70 *YALE L.J.* 175, 220 (1960). We therefore reject the argument that the N.L.R.B. is required to defer to state tribunals with respect to the reasonableness issue. Such "reverse preemption" would not, in our view, be consonant with the principles underlying the N.L.R.A."

Although the Board has not previously had to examine the reasonableness of union fines, it is not without experience in

"We emphasize the fact that "[t]he function of striking that balance to effectuate national labor policy is often a difficult and delicate responsibility, which the Congress committed primarily to the National Labor Relations Board . . ." *N.L.R.B. v. Truck Drivers Union*, 353 U.S. 87, 96 (1957). This is the very function which the Board is being asked to perform here.

a related area. Under Section 8(b)(5),²⁹ it is required to determine whether initiation fees required by a labor organization under a union-security agreement are excessive.³⁰ The fact that Section 8(b)(1)(A) does not provide the Board with specific standards to be applied in determining the reasonableness of a union fine, while Section 8(b)(5) does include several express standards, does not detract from the N.L.R.B.'s authority under 8(b)(1)(A). See *N.L.R.B. v. Radio and Television Broadcast Engineers Union*, 364 U.S. 573, 582-583 (1961). "Experience and common sense will supply the grounds for the performance of this job," which we have concluded was implicitly entrusted by Congress to the Board, 364 U.S. at 583.

The Board must remember that a fine imposed for the violation of a legitimate union rule should be viewed as presumptively protective, and therefore privileged, when the amount of the fine, taking into account the character and im-

²⁹ 29 U.S.C. § 158(b)(5) (1970), which provides:

(b) It shall be an unfair labor practice for a labor organization or its agents—

• • • • •
 (5) to require of employees covered by an agreement authorized under subsection (a) (3) [i.e., a union-security provision,] the payment, as a condition precedent to becoming a member of such organization, of a fee in an amount *which the Board finds excessive or discriminatory* under all the circumstances. In making such a finding, the Board shall consider, among other relevant factors, the practices and customs of labor organizations in the particular industry, and the wages currently paid to the employees affected; (emphasis supplied)

³⁰ See, e.g., *Longshoremen, I.L.A., Local 1419*, 186 NLRB No. 94, 75 LRRM 1411 (1970), wherein a violation of § 8(b)(5) was found. See also *N.L.R.B. v. Television & Radio Broadcasting Studio Employees, Local 804*, 315 F.2d 398 (3rd Cir. 1963).

portance of the ends served by the rule being enforced, is reasonably related to the need for protection. On the other hand, if the amount of the fine is such as to be inordinately disproportionate to the needed protection, an inference is warranted that the fine was imposed upon the member, not in vindication of a legitimate union interest, but rather as a reprisal for his having exercised a statutorily protected right. In the latter situation, as we have previously indicated, the fine would be "coercive" within the meaning of Section 8(b)(1)(A) of the Act. In determining whether an imposed fine is privileged or prohibited, due to its size, many factors may properly be considered by the Board. We shall mention several obvious factors which might be considered on remand, along with others the Board may consider to be applicable.

The reasonableness of a fine would necessarily have to be determined in light of the circumstances leading to its imposition. Such factors as the compensation received by the strikebreakers, the level of strike benefits made available to the striking employees, the individual needs of the persons being disciplined, the detrimental effect of the strikebreaking upon the effectiveness of the strike effort, the length of time of the work stoppage, the strength of the particular union involved, the availability of other less harsh union remedies, and many other similar considerations would clearly be relevant.

One additional consideration is worthy of mention. In its original *Scofield* decision, 145 NLRB 1097, 1104 (1964), the Board expressly indicated that a union had no right to impose any penalty which would "impair the member's status as an employee." This prohibition against union disciplinary action adversely affecting an employee's employment status has been approved by the Supreme Court. See *N.L.R.B. v. Allis-Chalmers Mfg. Co.*, *supra*, 388 U.S. at 196; *Scofield v. N.L.R.B.*, *supra*, 394 U.S. at 423, 428. While this principle clearly prohibits a union from seeking the sus-

pension or termination of an employee by his employer due to his strikebreaking," its implications may have further application which might be relevant to the present case. Where a disciplinary fine is unreasonably excessive, it may possibly affect the employee's employment status as adversely—and possibly even more adversely—as an illegally obtained employment suspension. On remand, the Board might also consider this protective policy of the Act in determining the reasonableness of the fines in question under Section 8(b)(1)(A).²²

²² See 29 U.S.C. § 158(b)(2) (1970), which provides, *inter alia*:

(b) It shall be unfair labor practice for a labor organization or its agents—

• • • • •
 (2) to cause or attempt to cause an employer to discriminate against an employee in violation of subsection (a) (3)

29 U.S.C. § 158(a)(3) (1970), provides, *inter alia*:

(a) It shall be an unfair labor practice for an employer—

• • • • •
 (3) by discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization

²³ We, of course, recognize that Section 8(b)(2) was enacted to prevent a union from improperly interfering with an individual's employment relationship through his employer. However, this does not detract from the fact that this provision evidences a Congressional desire to protect an employee from any unreasonable adverse affect on his employment status by a labor organization. See *N.L.R.B. v. Allis-Chalmers Mfg. Co.*, *supra*, 388 U.S. at 195; *Sacfield v. N.L.R.B.*, *supra*, 394 U.S. at 123, 123.

III

Labor Board Remedy

Although we are remanding this case to the N.L.R.B. for further consideration of the reasonableness question, it is apparent that the other aspects of the Board's decision below should be immediately affirmed. As was noted earlier in this opinion, the cease and desist order prohibiting further Union action pertaining to post-resignation strikebreaking conduct is granted enforcement. A more difficult question arises with respect to the affirmative aspects of the Board's decision.

"In § 10(c) of the Act" Congress has given the Board broad power to fashion remedies to effectuate the policies of the Labor Act. So long as the Board exercises responsibility in its judgment, courts should not interfere with its remedy, since this is 'peculiarly a matter for administrative competence.' *Phelps Dodge Corp. v. NLRB*, 313 U.S. 177, at 194 . . . (1941)."²⁹ "The Board's power to fashion remedies places a premium upon agency expertise and experience, and the broad discretion involved is for the agency and not the court to exercise." *Amalgamated Clothing Workers of America v. N.L.R.B.*, 125 U.S. App.D.C., 275, 281, 371 F.2d 740, 746 (1966)."

²⁹ 29 U.S.C. § 160(c) (1970) authorizes the Board to require the perpetrator of an unfair labor practice "to take such affirmative action . . . as will effectuate the policies of this [Act] . . ."

³⁰ *Office and Professional Employees International Union, Local 425 v. N.L.R.B.*, 136 U.S. App.D.C. 12, 19-20, 419 F.2d 314, 321-322 (1969). See *Frank Bros. Co. v. N.L.R.B.*, 321 U.S. 702, 704 (1944); *Fibreboard Paper Products Corp. v. N.L.R.B.*, 379 U.S. 203, 215-217 (1964). See also *N.L.R.B. v. Seven-Up Bottling Co.*, 344 U.S. 344 (1953).

³¹ See cases cited 125 U.S. App.D.C. at 281 n. 5, 371 F.2d at 746 n. 5.

With these considerations in mind, we clearly must affirm that part of the Board's order which requires the Union to reimburse the approximately 35 employees who apologized and pledged loyalty, thereby obtaining a reduction in their respective penalties, for any amounts paid which were based upon post-resignation strikebreaking earnings.⁴² We similarly affirm that portion of the order requiring the total reimbursement of any fines paid by employees who effectively resigned before engaging in any strikebreaking activity.

With respect to the Board's order as it relates to the remaining employees who resigned, the Board established a reimbursement formula which pro rated each employee's respective fine, thereby limiting the collectable portion to that part which reflects the amount of pre-resignation conduct. It obviously believed that this was the most reasonable manner in which to rectify the effects of the Union's unfair labor practice with respect to these persons.

The utilization of remedial formulas has been approved by the Supreme Court. *N.L.R.B. v. Seven-Up Bottling Co.*, 344 U.S. 344 (1953). Keeping in mind our limited review function, we are unable to conclude that "the order is a patent attempt to achieve ends other than those which can fairly be said to effectuate the policies of the Act." *Virginia Electric & Power Co. v. N.L.R.B.*, 319 U.S. 533, 540 (1943). "While it is true that [such] a retroactive order might afford the employees a better position . . . the Board can hardly be said to be effectuating policies beyond the purposes of the Act by resolving the doubt against the party who violated the Act." *Leeds & Northrup Co. v. N.L.R.B.*, 391 F.2d 874, 890 (3rd Cir. 1968).⁴³ We therefore must affirm this portion of the Board's affirmative reimbursement order.

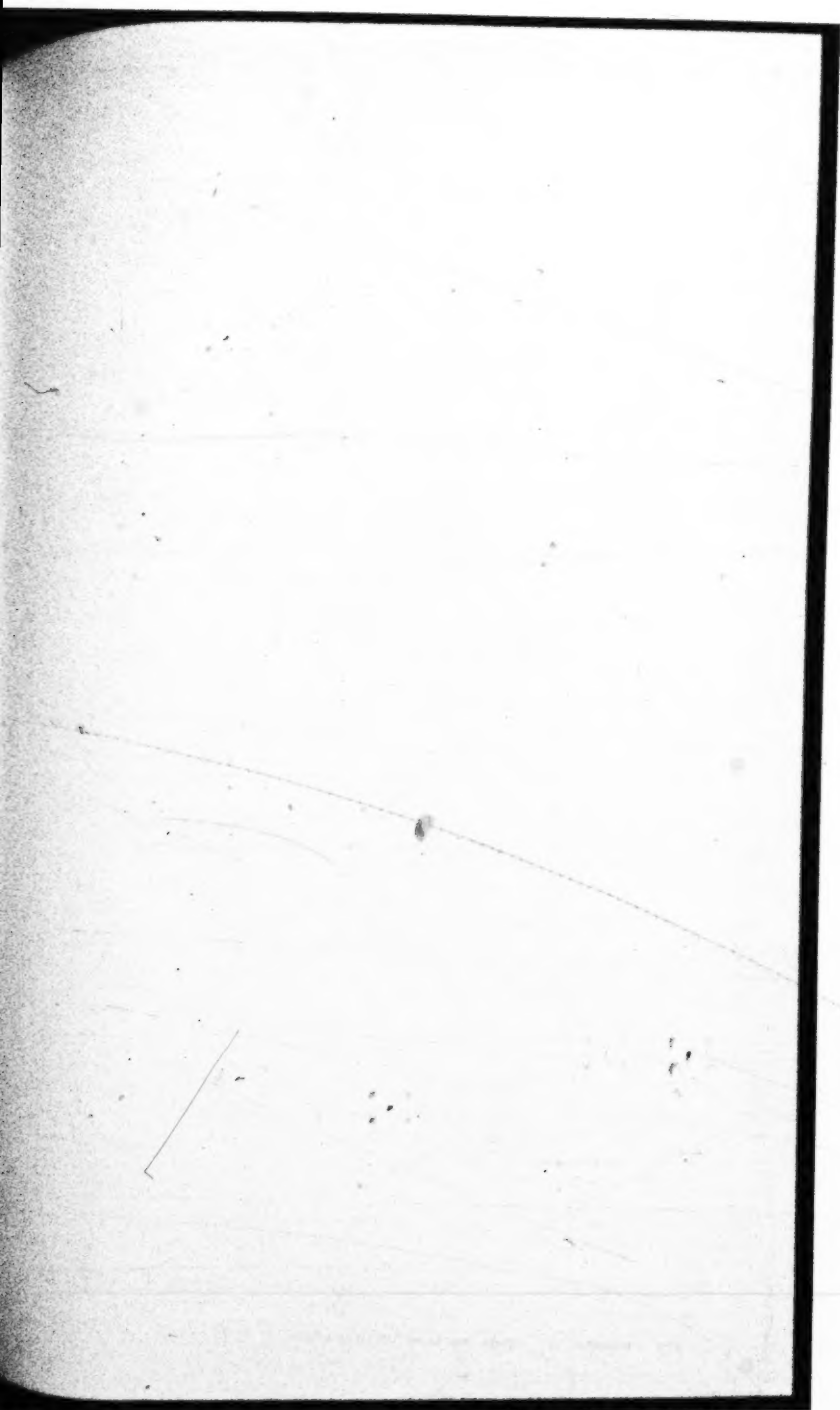
⁴² See n. 24, *supra*, for further discussion of the remedy pertaining to these persons.

⁴³ We are cognizant of the fact that the Union's \$450.00 fine was imposed upon all strikebreakers—except those who apol-

The case is remanded to the Labor Board for further consideration of the questions relating to the reasonableness of the fines imposed by the Union.

So Ordered.

ogized and pledged loyalty—regardless of the number of days of strikebreaking engaged in by each. Although the Union argues that this fact indicates that no pro rata reduction should have been required by the Board with respect to these employees, we recognize the N.L.R.B.'s obvious desire to formulate an affirmative order which would rectify the Union's improper attempt to punish post-resignation conduct. We cannot conclude that the Board has abused its broad discretionary authority in this area. *See N.L.R.B. v. Seven-Up Bottling Co.*, 344 U.S. 344 (1953).



MAR 1 1972

E. ROBERT SEAVER, CLERK

**In the
Supreme Court of the United States**

OCTOBER TERM, 1971

No. 71-711

**NATIONAL LABOR RELATIONS BOARD,
PETITIONER**

v.

**GRANITE STATE JOINT BOARD,
TEXTILE WORKERS UNION OF AMERICA,
LOCAL 1029, AFL-CIO,
RESPONDENT**

**RESPONSE TO PETITIONER'S PETITION FOR
A WRIT OF CERTIORARI TO THE UNITED
STATES COURT OF APPEALS FOR THE FIRST
CIRCUIT**

**HAROLD B. ROITMAN
11 Beacon Street
Boston, Massachusetts 02108
*Attorney for Granite State Joint
Board, Textile Workers Union of
America, Local 1029, AFL-CIO***

Of Counsel:

**DONALD J. SIEGEL
SEGAL, ROITMAN & COLEMAN
11 Beacon Street
Boston, Mass. 02108**

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**In the
Supreme Court of the United States**

OCTOBER TERM, 1971

No. 71-711

NATIONAL LABOR RELATIONS BOARD,

PETITIONER

v.

**GRANITE STATE JOINT BOARD,
TEXTILE WORKERS UNION OF AMERICA,
LOCAL 1029, AFL-CIO,**

RESPONDENT

**RESPONSE TO PETITIONER'S PETITION FOR
A WRIT OF CERTIORARI TO THE UNITED
STATES COURT OF APPEALS FOR THE FIRST
CIRCUIT**

The Granite State Joint Board, Textile Workers Union of America, Local 1029, AFL-CIO, respectfully urges the Court to deny the Petitioner's Petition for a writ of certiorari.

Opinions Below

The Court of Appeals' opinion is reported at 446 F 2nd 329; it is reproduced in Appendix A of the Petitioner's

Petition. The NLRB's decision in this case is reported at 187 NLRB No. 90; it is reproduced in Appendix C, pp. 13a-17a, of the Petitioner's Petition.

Jurisdiction

The judgment of the Court of Appeals (Appendix B of Petitioner's Petition) was entered on June 29, 1971. On September 20, 1971, Mr. Justice Brennan extended the time for filing a petition for a writ of certiorari through November 26, 1971. The Solicitor General filed a petition for a writ of certiorari on November 26, 1971. On January 31, 1972, the Chief Deputy Clerk of the Supreme Court wrote to Harold B. Roitman, attorney for the Granite State Joint Board of the Textile Workers Union of America, Local 1029, AFL-CIO, and requested that a response to Petitioner's Petition for a Writ of Certiorari be filed with the Court on or before March 1, 1972. The jurisdiction of this Court was originally invoked pursuant to 28 U.S.C. 1254(1).

Question Presented

Whether a member of a union, engaged in a lawful strike, may escape his obligation to refrain from strike-breaking by submitting a resignation to his union and then engaging in strikebreaking?

Statutes Involved

Sections 7 and 8(b)(1)(A) of the National Labor Relations Act (61 Stat. 136, 73 Stat. 519, 29 U.S.C. 151 et seq.) are involved in this case. In relevant part, section 7 of the Act provides, "Employees shall have the right to self-organization, to form, join or assist labor organizations ...and to engage in other concerted activities for the

purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities..."

The pertinent parts of section 8(b)(1)(A) are as follows: "8(b) It shall be an unfair labor practice for a labor organization or its agents— (1) to restrain or coerce (A) employees in the exercise of the rights guaranteed in section 7: Provided, That this paragraph shall not impair the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership therein;..."

Statement of the Case

The International Paper Box Machine Company and the Granite State Joint Board, Textile Workers Union of America entered into a collective bargaining agreement on September 20, 1965. The term of the agreement was three years. On September 14, 1968, six days before the scheduled expiration of the 1965 agreement, the union membership voted to strike if no agreement was reached by September 20, 1968. All thirty-one employees involved in this case voted to strike.¹ No new agreement was reached by the deadline and a strike commenced on September 20, 1968. A few days after the strike began, the union membership at a meeting passed a motion providing that anyone aiding or abetting the Company² during the strike would be subject to a fine of up to \$2000.00.³

¹ See fn. 2 of the decision of the Court of Appeals, p. 3a of Petitioner's Petition and 446 F 2nd at 370.

² International Paper Box Machine Company which will hereinafter be referred to as the "Company".

³ The Court of Appeals found that it was very likely that most of the thirty-one employees involved herein had voted in favor of the fine motion. See fn. 2 of the Court's decision, p. 3a of Petitioner's Petition and 446 F 2nd at 370. The vote on the fine resolution was unanimous. See Trial Examiner's Decision of June 4, 1969, p. 23a of Petitioner's Petition and page 5 of the Appendix submitted to the First Circuit Court of Appeals.

On November 5 and 25, 1968 while the strike was still in progress two employees⁴ sent letters of resignation to the Union.⁵ The Union refused to accept these mid-strike resignations and warned both employees of their liability to fines for strike-breaking. The two employees filed unfair labor practice charges against the Union and shortly thereafter the NLRB issued a complaint alleging that the threat of fines in these circumstances violated Section 8(b)(1)(A). After a hearing the Trial Examiner found no violation.⁶ During the months that followed the June, 1969 decision, twenty-nine more employees submitted mid-strike resignations; the Union responded to these resignations in the same manner it responded to those of Radziewicz and Kimball. Later charges were brought against the strikebreakers by Union members. All thirty-one were properly notified, tried and found guilty by a duly constituted Union tribunal, and varying fines were imposed. When the strikebreakers failed to pay the fines and other amounts due to the Union, the Union brought suit in the New Hampshire Court to collect on its contracts.⁷ At this point, the fined employees filed unfair labor practice charges with the Board. A complaint was issued alleging that the fining of the thirty-one

⁴ Felix Radziewicz and Maurice Kimball.

⁵ Granite State Joint Board, Textile Workers Union of America, Local 1029, AFL-CIO, which will hereinafter be referred to as the "Union".

⁶ See Trial Examiner's Decision in 1-CB-1460-1-2 appearing at p. 30a of Petitioner's Petition and p. 3 of the Appendix before the First Circuit Court of Appeals. The Trial Examiner's decision was dated June 4, 1969. Trial Examiner Janus did say in dicta that the resignations were effective and that fining these employees for post-resignation strike breaking might well violate section 8(b)(1)(A).

⁷ The suits were brought in the Hillsborough Superior Court. Each writ contains two counts. In the first count, the Union prays for the fines imposed upon the strikebreakers. In the second count, the Union seeks to recover moneys advanced to the strikebreakers to pay group life and health insurance premiums. The Defendants filed a Motion To Dismiss the writs; that motion was denied and the cases are now awaiting trial.

strikebreakers and the attempted judicial enforcement of those fines violated Section 8(b)(1)(A). The Trial Examiner so found⁸ and the Board sustained his findings and order.⁹

The NLRB's Decision and Order

The Board held by a 2-1 margin that the mid-strike resignation of the thirty-one employees effectively severed any connection they might have had with the Union. Relying on its decision in *Booster Lodge No. 405, IAM (The Boeing Company)*,¹⁰ the Board held that the fining of these strikebreakers and the attempted collection by judicial process of those fines violated Section 8(b)(1)(A) of the NLRA. The Board ordered the Union to rescind the fines and withdraw the state court suits.

The Court of Appeals' Decision

The Court of Appeals denied enforcement of the NLRB's order. In its decision of June 29, 1971, the Court applied the mutual reliance principle to the participants in this strike.

"We can imagine a case involving three hypothetical employees whom we shall call Jones, Smith and Parks. Initially Jones is anxious to strike but Smith and Parks hesitate, finally acquiescing on the condition that all agree to stick it out for the duration of the strike. We suggest that this kind of mutual reliance is implicit in all strike votes; many employees would hesitate to forego several weeks or months of pay if they knew

⁸ See Supplemental Decision of the Trial Examiner reproduced at p. 36a of Petitioner's Petition.

⁹ 187 NLRB No. 90; see also p. 13a of Petitioner's Petition.

¹⁰ 185 NLRB No. 23; see also p. 55a of Petitioner's Petition.

their cohorts were free to cross the picket line at any time merely by resigning from the union."¹¹ (emphasis added).

The Court of Appeals refused to interpret the 1947 amendment to Section 7¹² to authorize mid-strike resignations. Its interpretation was based on the meaning of the term "refrain" and the legislative history of the amendment. Additional support for the Court of Appeals' decision was found in *NLRB v. Allis Chalmers Manufacturing Co.*, 388 U.S. 175 (1967).

Reasons for Denying the Writ

The writ should be denied because the decision of the First Circuit Court of Appeals was correct. The mutual reliance of each striking member upon the representations of his fellow strikers more than justifies the Court's decision. Briefly stated, the Court of Appeals holds that employees who agree to undertake a strike waive their Section 7 right to refrain from striking until a strike ends.¹³ The fact that an employee submits a resignation to the Union immediately before engaging in strikebreaking does not affect the Section 7 waiver.

The equities clearly support the Court's decision. All thirty-one of these employees voted to strike.¹⁴ None of them opposed the fine motion.¹⁵ Unlike the *Boeing* case,

¹¹ 446 F.2d at 372, see pp. 6a-7a of Petitioner's Petition.

¹² The Taft-Hartley amendments added the following phrase to Section 7, "to refrain from any or all such activities..."

¹³ It must be remembered that a majority vote of the membership could have terminated this strike. If these thirty-one employees could have convinced about fifty of their brothers to terminate the strike, it would have ended. There is no evidence that they ever attempted such an approach.

¹⁴ See fn. 1 *supra*.

¹⁵ See fn. 3 *supra*.

a specific resolution of the local union authorized these fines. No attempt to exhaust internal union remedies was made by the strikebreakers.¹⁶

The decision is consistent with *Allis-Chalmers*, supra. There the Court held that Section 8(b)(1)(A) did not apply to judicial enforcement of union strikebreaking fines. The rationale of *Allis-Chalmers* certainly mandates its extension to these thirty-one strikebreakers. At 388 U.S. 181, this Court said,

"Integral to this federal labor policy has been the power in the chosen union to protect against erosion of its status under that policy through reasonable discipline of members who violate rules and regulations governing membership. *That power is particularly vital when the members engage in strikes.* The economic strike against the employer is the ultimate weapon in labor's arsenal for achieving agreement under its terms and "[t]he power to fine or expel strikebreakers is essential if the union is to be an effective bargaining agent..." (Emphasis added; footnotes omitted).

Further, the writ should be denied because there is no real conflict between the Circuit Courts of Appeal on the question presented. On February 3, 1972, the Court of Appeals for the District of Columbia Circuit decided *Booster Lodge No. 406, IAM v. National Labor Relations Board*, ___ F 2nd ___.¹⁷

¹⁶ See fn. 14 supra. In *Scotfield v. National Labor Relations Board*, 394 U.S. 423, the Supreme Court noted the importance of at least attempting to bring about the desired change within the union. See fn. 7 of Petitioner's Petition quoting from the court's opinion at 394 U.S. 423, 435.

¹⁷ The Court's opinion is set out in the Appendix to the Petitioner's Supplemental Memorandum in support of its Petition. The docket numbers on the case were 24,687 and 24,744.

The Court of Appeals for the First Circuit was careful to distinguish the facts of the instant case from the facts in the then pending *Boeing* case. The Court noted,

"... the *Boeing* case, *supra*, may be distinguishable on its facts since in *Boeing* the fines were authorized by a general provision in a union constitution, rather than by a specific decision of the membership adopted in the context of a particular strike. In *Boeing* the Board emphasized that the Union had not warned members about the possible imposition of disciplinary measures. Also the *Boeing* opinion did not consider whether any of the employees who crossed the picket line had originally voted to support the strike . . ."

Likewise, the Court of Appeals for the District of Columbia Circuit, distinguished *Boeing* from *Granite State* in the following manner:

"Although the court in *Granite State* upheld the right of the union involved to impose fines on strikebreakers for post-resignation activity, it emphasized that a specific set of facts was present which it believed rendered such a result equitable, and it specifically recognized that these considerations were not present with respect to the instant *Booster Lodge 405* case.¹⁶ In *Granite State*, the Board conceded that all of the fined employees had voted in favor of the strike in question.¹⁷ It is also important to note that the fines had not been imposed pursuant to a general provision in the union constitution, as here, but rather in accordance with a specific proclamation which had been unanimously adopted by the membership after the work stoppage commenced. See 446 F.2d at 370, 372 n. 5. Furthermore, all of those who were disciplined in *Granite State* had

been expressly pre-warned of possible punishment for strike-breaking,¹⁸ while the employees with whom we are herein concerned received no such pre-strikebreaking notification. Because of these distinguishing facts, we refuse to apply the rationale of *Granite State* to the instant factual situation.¹⁹ The strong equities which weighed in favor of the union there, are clearly not present here. In fact, their very absence powerfully supports the result which we have accepted."¹⁹

Conclusion

For the reasons set out above, the petition for a writ of certiorari should be denied.

Respectfully submitted,

HAROLD B. ROITMAN
11 Beacon Street
Boston, Massachusetts 02108
*Attorney for Granite State Joint
Board, Textile Workers Union of
America, Local 1029, AFL-CIO*

Of Counsel:

DONALD J. SIEGEL
SEGAL, ROITMAN & COLEMAN
11 Beacon Street
Boston, Mass. 02108

¹⁸ 446 F 2nd at 372, n. 5 and p. 6a of Petitioner's Petition.

¹⁹ ___ F 2nd ___, and pp. 14-15 of the Petitioner's Supplemental Memorandum in Support of its Petition for a Writ of Certiorari.

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In the Supreme Court of the United States

OCTOBER TERM, 1971

No. 71-711

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

**GRANITE STATE JOINT BOARD, TEXTILE WORKERS
UNION OF AMERICA, LOCAL 1029, AFL-CIO**

**ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE FIRST CIRCUIT**

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD

OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-11a)¹ is reported at 446 F. 2d 369. The decision and order of the National Labor Relations Board (Pet. App. 13a-19a) are reported at 187 NLRB No. 90.

JURISDICTION

The judgment of the court of appeals (Pet. App. 12a) was entered on June 29, 1971. On September 20, 1971, Mr. Justice Brennan extended the time for

¹"Pet. App." refers to the appendix to the petition for a writ of certiorari. "A." refers to the separate appendix to the briefs.

filing a petition for a writ of certiorari to and including November 26, 1971. The petition was filed on that date, and was granted on March 20, 1972 (A. 110). The jurisdiction of this Court rests on 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether a union violates Section 8(b)(1)(A) of the National Labor Relations Act by fining employees who resigned from union membership and then returned to work during a lawful union-authorized strike, and by seeking judicial enforcement of the fines.

STATUTE INVOLVED

The relevant provisions of the National Labor Relations Act, as amended (61 Stat. 136, 73 Stat. 519, 29 U.S.C. 151, *et seq.*), are as follows:

SEC. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities * * *

SEC. 8(b) It shall be an unfair labor practice for a labor organization or its agents—

(1) to restrain or coerce (A) employees in the exercise of the rights guaranteed in section 7: *Provided*, That this paragraph shall not impair the right of a labor organization to prescribe its own rules with respect to the

acquisition or retention of membership therein.

STATEMENT

A. THE BOARD'S FINDINGS OF FACT

On September 20, 1965, the Company¹ and the Union,² which represents the Company's production and maintenance employees, executed a collective bargaining agreement for a three-year term. The agreement contained a maintenance-of-membership clause providing that employees who were union members when the contract was executed, or who joined the Union during the contract term, were, as a condition of continued employment, to remain members in good standing "as to payment of dues" for the duration of the contract (Pet. App. 24a-25a; A. 5, 30-31). Neither the contract nor the Union's constitution or bylaws contained any provision defining or limiting the circumstances under which a member could resign from the Union (Pet. App. 25a-26a, 43a; A. 25-27, 58, 37-40).

On September 14, 1968, six days before the scheduled expiration of the collective bargaining agreement, the union membership voted to strike if no agreement was reached by September 20. No agreement was reached, and the strike, with attendant picketing, began on that day (Pet. App. 22a; A. 13, 18-19).³ On

¹ International Paper Box Machine Company.

² Granite State Joint Board, Textile Workers Union of America, AFL-CIO.

³ All of the approximately 160 union members in the unit went out on strike. The plant remained open, but only supervisors, clerical, office, and technical employees, and the 3 or 4 employees in the unit who were not union members worked (Pet. App. 22a).

September 21, the Union held a meeting to discuss strike organization, at which the membership approved a resolution that anyone aiding or abetting the Company during the strike would be subject to a \$2000 fine (Pet. App. 22a-23a; A. 19, 29).^{*}

On November 5 and 25, respectively, two employees (Radziewicz and Kimball) mailed letters of resignation to the Union (A. 89, 96). The Union wrote each employee, in reply, that it considered their purported resignations to be ineffective, and that they would be subject to a fine of \$2000 if they crossed the picket line (Pet. App. 23a-24a; A. 20, 32-33, 35-36). During the period May 9 to September 19, 1969, 29 other employees also resigned from the Union. They, together with Kimball and Radziewicz, returned to work (Pet. App. 41a; A. 44-50, 82-99, 50-51, 52, 54-55, 64, 65, 66).

After the 31 employees returned to work, the Union sent each a letter charging him with misconduct by crossing its picket line, and requesting him to appear at a hearing at a specified time to answer the charge (Pet. App. 41a; A. 66-67, 80-81). None appeared. The Union tried the 31 employees *in absentia*, and then notified each employee that he had been found guilty and had been fined the equivalent of a day's wages for each day worked during the strike, the fines being payable immediately (Pet. App. 41a; A. 66-67, 101-102). Later, the Union sent each

^{*} Most of the members, including the employees involved here, attended both the September 14 and the September 21 meetings. The members assented to the strike by a standing vote, with only one member dissenting. The motion to levy the fine was adopted unanimously without debate (Pet. App. 22a-23a; A. 19, 7, 10-11, 17-18, 28, 29).

employee a letter threatening legal action to collect the fine (Pet. App. 41a-42a; A. 100). When none of the employees paid, the Union filed suits in a New Hampshire state court to collect the fines (Pet. App. 42a; A. 67, 103-105). The employees, in turn, filed unfair labor practice charges with the Board.*

B. THE BOARD'S DECISION AND ORDER

The Board concluded that the 31 employees had effectively resigned from the Union before returning to work, and that the Union violated Section 8(b)(1) (A) of the Act by thereafter fining them and seeking judicial enforcement of the fines (Pet. App. 13a-19a). The Board relied upon its earlier decision in *Booster Lodge No. 405, Int'l Assoc. of Machinists (The Boeing Co.)*, 185 NLRB No. 23 (1970) (Pet. App. 55a-70a).⁷ There, the Board held that the union's right to fine a member for crossing a picket line during a strike, recognized in *National Labor Relations Board v. Allis-Chalmers Mfg. Co.*, 388 U.S. 175, is extinguished by the member's effective resignation from the union before returning to work.⁸ The Board

*The state court suits are being held in abeyance pending the outcome of this proceeding.

⁷With a modification not relevant here, this decision has been sustained by the Court of Appeals for the District of Columbia Circuit. *Booster Lodge No. 405, Int'l Assoc. of Machinists v. National Labor Relations Board and the Boeing Co.*, 79 LRRM 2443, decided February 3, 1972, petition for certiorari filed, No. 71-1417.

⁸However, the Board in *Booster Lodge* held that the union did not violate Section 8(b)(1)(A) by fining the former members for strikebreaking prior to their resignations from the union (Pet. App. 64a-66a).

ordered the Union, *inter alia*, to rescind the fines and to withdraw the state court suits (Pet. App. 16a, 17a, 49a-51a).

C. THE COURT OF APPEALS' DECISION

The court of appeals denied enforcement of the Board's order. The court acknowledged that neither the Union's constitution nor its bylaws contained any express provision limiting the members' rights to resign and that, the collective bargaining agreement having expired, the "Maintenance of Membership" provision was not in effect during the strike (Pet. App. 5a). However, the court held that the September 1968 strike vote, by analogy to charitable subscriptions, was an enforceable promise of each member "to stick it out for the duration of the strike" (Pet. App. 6a) and constituted a waiver of his Section 7 right to refrain from such concerted activities.

The court stated that, "although § 7 gives an employee the right to refuse to undertake and involve himself in union activities, it does not necessarily give him the right to abandon these activities in midcourse once he has undertaken them voluntarily" (Pet. App. 7a). The court reasoned (Pet. App. 8a-9a):

[T]he policy of allowing unions to maintain strike discipline [recognized in *Allis-Chalmers*, *supra*] can be reconciled with the policy of allowing employees to refrain from concerted activities if the Act is interpreted to permit the waiver of § 7 rights by employees. Under this interpretation, employees who agreed to undertake specific union activities and obligations would be held to have waived their § 7 rights to

refrain from those activities * * *. [Footnote omitted.] *

SUMMARY OF ARGUMENT

In *National Labor Relations Board v. Allis-Chalmers Mfg. Co.*, 388 U.S. 175, the Court held that a union did not violate Section 8(b)(1)(A) of the Act by fining members who went to work during a lawful strike authorized by the membership, and suing to enforce the fines. The contract of union membership, upon which the fines in *Allis-Chalmers* were based, also defines the limits of a union's power to discipline members. When a member lawfully resigns, the union's power over him ends. *Scofield v. National Labor Relations Board*, 394 U.S. 423, 430.

1. The Union's constitution and bylaws here contain no provision defining or limiting the circumstances under which a member could resign from the Union. Under the law governing voluntary associations, where there is no specific provision in the constitution or bylaws, members may "resign at will * * * subject to any financial obligation due and owing the association." *Communications Workers v. National Labor Relations Board*, 215 F. 2d 835, 838 (C.A. 2). In joining a union, a member "consents to the possible imposition of union discipline upon his exercise of [his Section 7] right [to refrain from concerted activi-

*The court concluded that "[i]n light of our analysis of the specific obligation to strike undertaken in this case, [the extent to which and the conditions under which union members must be free to resign] is an issue we need not reach here" (Pet. App. 11a).

ties]." *Boeing, supra*, 185 N.L.R.B. No. 23 (Pet. App. 61a). When a member lawfully resigns from a union, he reacquires all of his Section 7 rights to refrain from union activities, and the union's attempt to restrain or coerce his exercise of those rights is an unfair labor practice, in violation of Section 8(b)(1)(A).

2. There are cogent reasons for not reading into the Union's constitution or bylaws an implied obligation to remain a member of, or support the Union, for the duration of an authorized strike. The law will not "usually imply offenses not specified in a union's constitution or by-laws." *Booster Lodge No. 405, Int'l Ass'n of Machinists v. National Labor Relations Board and the Boeing Co.*, 79 LRRM 2443, 2448 (C.A.D.C.). Moreover, the Section 7 guarantee of a right to refrain from concerted activities argues against inferring such offenses (*ibid.*).

In balancing the union's interest in solidarity and the individual's desire to abstain from union activities, the Board properly concluded that Section 7 indicates that the balance be struck in favor of the individual. While a member may be sympathetic to a strike when it is first called, events occurring thereafter, which he may not have anticipated, may lead him to alter his view and to desire to return to work. Since Section 7 expressly protects the right of an employee to refrain from engaging in concerted activity, the Board correctly held that the Act permits the employee to change his mind about the strike without running the risk of a court-collectible disciplinary fine, provided that he is willing effectively to resign from the union before abandoning the strike.

3. Contrary to the court of appeals' reasoning, the fact that a strike was in progress, or that the members voted for the strike, should not require a different result. Neither contract law nor federal labor policy justifies viewing the September 1968 strike vote of the members who later resigned as a waiver of their Section 7 rights. While such vote may constitute a waiver of a member's right to oppose a union policy while he remains a member, it is not a commitment to remain a member, or to support the policy after he has resigned. Making the lawfulness of the union discipline turn upon a member's earlier strike vote would seriously curtail an employee's Section 7 right to refrain from engaging in union activity. Moreover, it would tend to impede union democracy by prompting the employee to abdicate participation in, and responsibility for, union affairs.

ARGUMENT

THE UNION VIOLATED SECTION 8(b)(1)(A) OF THE NATIONAL LABOR RELATIONS ACT BY FINING EMPLOYEES WHO RESIGNED FROM UNION MEMBERSHIP AND THEN RETURNED TO WORK DURING A LAWFUL UNION-AUTHORIZED STRIKE, AND BY SEEKING JUDICIAL ENFORCEMENT OF THE FINES

INTRODUCTION

Section 8(b)(1)(A) of the Act makes it an unfair labor practice for a union to "restrain or coerce" employees in the exercise of rights guaranteed by Section 7. Section 7 guarantees employees the right to engage in concerted activities, as well as "the right

to refrain from any or all of such activities." A proviso to Section 8(b)(1)(A) preserves the right of a union "to prescribe its own rules with respect to the acquisition or retention of membership therein."

In *National Labor Relations Board v. Allis-Chalmers Mfg. Co.*, 388 U.S. 175, the Court held that a union did not violate Section 8(b)(1)(A) of the Act by fining members who went to work during a lawful strike authorized by the membership, and by suing in court to enforce the fines. The Court observed that "[t]he majority-rule concept is today unquestionably at the center of our federal labor policy" and that "[i]ntegral to this federal labor policy has been the power in the chosen union to protect against erosion its status under that policy through reasonable discipline of members who violate rules and regulations governing membership" (388 U.S. at 180-181). After a thorough canvassing of the legislative history of Section 8(b)(1), the Court concluded that Congress did not intend, in enacting the Taft-Hartley amendments, to "limit * * * unions in the powers necessary to the discharge of their [statutory] role * * *" (388 U.S. at 183). Stressing "the repeated refrain throughout the debates on § 8(b)(1)(A) and other sections that Congress did not propose any limitations with respect to the internal affairs of unions * * *" (388 U.S. at 195), the Court concluded that Section 8(b)(1)(A) could not reasonably be construed to include "a prohibition against the imposition of fines on members who decline to honor an authorized strike and attempts to collect such fines" (388 U.S. at 195).

In addition to sustaining the right of the union to impose fines on members engaged in strikebreaking, the Court held that the bringing of lawsuits to enforce the fines did not violate the Act. The Court noted that "Congress was operating within the context of the 'contract theory' of the union-member relationship which widely prevailed at the time" (388 U.S. at 192), and found no expressions of Congressional concern with a union's means of enforcing its internal disciplinary rules.¹⁰ "A lawsuit," the Court concluded, "is and has been the ordinary way by which performance of private money obligations is compelled" (*ibid.*).

The contract of union membership, which was the basis of the fines imposed and collection actions instituted in *Allis-Chalmers*, also defines the limits of a union's power over its members. When the contract ends with a member's lawful resignation from the union, so does the union's power to discipline the employee. In *Scofield v. National Labor Relations Board*, 394 U.S. 423, the Court held that a union did not violate Section 8(b)(1)(A) by levying court-enforceable fines against members who exceeded a production quota established by union rule but acquiesced in by the employer. In so concluding, the Court stated that "§ 8(b)

¹⁰ While the proviso to Section 8(b)(1)(A) reserving to unions the right "to prescribe its own rules with respect to the . . . retention of membership" does not textually support a resort to the courts, the Court's "conclusion that § 8(b)(1)(A) does not prohibit the locals' actions makes it unnecessary to pass on the Board holding that the proviso protected such actions" (388 U.S. at 192, n. 29).

(1) leaves a union free to enforce a properly adopted rule which reflects a legitimate union interest, impairs no policy Congress has imbedded in the labor laws, and is reasonably enforced against union members *who are free to leave the union and escape the rule*" (394 U.S. at 430, emphasis supplied).¹¹

These two decisions provide the principles for resolution of this case. The union's discipline in *Allis-Chalmers* did not violate Section 8(b)(1)(A) because it was a union disciplinary proceeding undertaken against a member pursuant to the contract of membership. *Scofield* recognized that this union power is coterminous with the union-member contract. These cases compel the conclusion that where, as here, a union seeks judicial enforcement of fines against employees who lawfully resigned from the union before engaging in conduct which the union rule proscribed, it commits an unfair labor practice. We further submit that there is no valid basis for limiting the member's right to terminate his contract of membership merely because a strike for which the member voted is in progress.¹²

¹¹ The Court added: "If a member chooses not to engage in this concerted activity and is unable to prevail on the other members to change the rule, then he may leave the union and obtain whatever benefits in job advancement and extra pay may result from extra work * * *." 394 U.S. at 435.

¹² We are concerned here only with union discipline which takes the form of a fine enforceable by court action. No issue is presented as to whether a fine levied on an employee who has resigned from the union which is enforceable only through internal union procedures—e.g., conditioning readmission to union membership upon payment of the fine—would violate

A. THE UNION'S ATTEMPT TO DISCIPLINE THESE EMPLOYEES, AFTER THEIR LAWFUL RESIGNATIONS, WAS AN UNFAIR LABOR PRACTICE

The Union's constitution and bylaws contained no provision defining or limiting the circumstances under which a member could resign from the Union (*supra*, pp. 36). Under the law governing voluntary associations, where there is no specific provision in the constitution or bylaws, members may "resign at will, subject * * * to any financial obligation due and owing the association." *Communications Workers v. National Labor Relations Board*, 215 F. 2d 835, 838 (C.A. 2). Accord: *National Labor Relations Board v. Mechanical, etc. Workers Union, Local 444*, 427 F. 2d 883, 884-885 (C.A. 1); 6 A.M. Jur. 2d Associations and Clubs § 26. Moreover, since the retention-of-membership provision of the collective agreement expired with the agreement, that provision imposed no obstacle to resignation from the Union during the strike (Pet. App. 5a). Finally, the court below properly rejected the Union's contention that its established practice was to accept resignations from membership only during the annual ten-day "escape period" during which employees were allowed to revoke their "dues checkoff" authorizations (see A. 34). For, "as the trial examiner pointed out [Pet. App. 43a-44a], there was

Section 8(b)(1)(A) of the Act. Note the proviso to Section 8(b)(1)(A) (*supra*, pp. 2-3); see *Local 1255, Int'l Assn. of Machinists v. National Labor Relations Board (Mason & Hanger-Silas Mason Co.)*, 79 LRRM 2787 (C.A. 5), decided March 15, 1972.

no evidence that the employees knew of this practice or that they had consented to this limitation on their right to resign" (Pet. App. 6a).

In these circumstances, the Board correctly held that the Union's assessment of and attempt to obtain judicial enforcement of fines against former members who engaged in strikebreaking was an unfair labor practice. The Board based its decision on a contract analysis "more fully explicated in *The Boeing Company*" (Pet. App. 16a). In *Boeing, supra*, 185 NLRB No. 23 (Pet. App. 61a-62a), the Board had stated:

In joining a union, the individual member becomes a party to a contract-constitution. Without waiving his Section 7 right to refrain from concerted activities, he consents to the possible imposition of union discipline upon his exercise of that right. But the contract between the member and the union becomes a nullity upon his resignation. Both the member's duty of fidelity to the union and the union's corresponding right to discipline him for breach of that duty are extinguished. [Footnote omitted.]

In short, when the member effectively resigns from, and thereby terminates his contract of membership with, the union, he reacquires the full measure of his Section 7 right to refrain from concerted activities. In these circumstances, for the union to levy a judicially enforceable fine against him because he has failed to support the union after his resignation, restrains and coerces the exercise of that Section 7 right,

without serving any legitimate union interest. Accordingly, such discipline violates Section 8(b)(1) (A). "In the interplay between the statutory policy to prevent coercion of employees for exercising Section 7 rights on the one hand, and the policy to permit unions to guide their internal affairs * * * on the other, the former must prevail where the membership relation which justifies the latter is terminated." *Boeing, supra* (Pet. App. 64a).

A. THE FACT THAT A STRIKE IS IN PROGRESS, OR THAT A UNION MEMBER VOTED FOR IT, IS NOT A VALID REASON FOR LIMITING HIS RIGHT TO RESIGN OR REQUIRING HIS ADHESION TO THE STRIKE

The court of appeals recognized that neither the Union's constitution and by-laws nor the expired collective bargaining agreement in any way limited the members' rights to resign, and it noted the right of members of voluntary associations to resign at will in the absence of such contractual limitations (Pet. App. 5a). The court, however, gave controlling significance to the September 1968 strike vote, in which the resigning employees had participated. We submit that neither the fact that a strike is in progress, nor the fact that a member voted for it, in any way limits a member's right to resign or requires his adhesion to the strike once he leaves the union.

1. The Union's right to discipline a member is based upon its contract with him. At least where the "contract-constitution" contains no limitations on a member's right to resign, there is no warrant for reading into it an implied obligation to remain a mem-

ber of, or support the Union, during an authorized strike. Although "the function of the court is to determine, as far as is possible, the intention of the contracting parties and to give legal effect thereto," it is generally recognized that courts will not usually imply offenses not specified in a union's constitution or by-laws." *Booster Lodge No. 405, Int'l Assoc. of Machinists v. National Labor Relations Board and the Boeing Co.*, 79 LRRM 2443, 2448 (C.A.D.C.), decided February 3, 1972. See Summers, *Legal Limitations on Union Discipline*, 64 Harv. L. Rev. 1049, 1059-1061 (1951).

Moreover, as the court in *Boeing* added: "[a]n extremely important national labor policy militates against the imposition of such an implied obligation. Section 7 of the N.L.R.[A.] expressly protects the right of any employee to refrain from any or all of the concerted activities guaranteed to employees under the Act." 79 LRRM at 2448. Federal labor policy, expressed in Section 7, thus reinforces ordinary contract law principles in arguing against inferring a contractual obligation to engage in specific union activities.

In balancing the interest of the union in preserving solidarity during a strike against the interest of the individual employee who no longer wishes to remain a member of, or support the union, the Board properly concluded that Section 7 reflects a central principle of national labor policy weighing the balance in favor of the individual. Section 7 guarantees the voluntariness of an employee's union activities, and unions, by their constitutions and bylaws (their

"contracts" with members), are voluntary organizations; but voluntariness implies that the individual member is free to leave the association when he can no longer accept its policies (see *supra*, pp. 11-13). A strike, in particular, can cause such a change in attitude.

While an employee may be sympathetic to a strike when it is first called, events occurring thereafter, which he may not have anticipated, may lead him to alter his view and to desire to return to work. For example, he may have underestimated the duration of the strike and the resultant hardship to his family, or the employer's ability to hire permanent replacements for the strikers.¹² In the Board's view, a reasonable accommodation of the respective interests involved permits the employee to change his mind about the strike without running the risk of a disciplinary fine, provided that he is willing effectively to resign from the union before abandoning the strike. It would be incompatible with this accommodation to interpret the union's constitution and bylaws as imposing, by implication, an obligation on an employee-member not to withdraw from membership during an authorized strike.¹³

¹² Here, the first two strikers to resign from the Union did so 1½ to 2 months after the strike had begun (A. 89, 96). The other 29 did so 7½ to 12 months after its commencement (A. 82, 84, 86-99). The strike was still in progress in March 1969 (18 months after its inception), when the Board hearing opened (Pet. App. 22a).

¹³ The Board has not yet had occasion to consider whether a different accommodation would be warranted where the union's constitution or bylaws expressly limited the right of a member

The Board's position is not likely to encourage wholesale resignations from the union during a strike. The decision to resign from the union and abandon a strike is not one which the individual employee will make lightly. By resigning from the union, the individual loses the right to participate in union meetings at which policies are determined, the right to vote in union elections for the officers of the organization which acts as his bargaining representative, and the right to run for those offices himself. Moreover, he may lose the fringe benefits attached to union membership—e.g., low-interest loans; disability, old age, and death benefits. Finally, the resignee subjects himself to the social stigma of having abandoned his fellows in the midst of their battle. See Summers, *Legal Limitations on Union Discipline*, *supra*, 64 Harv. L. Rev. at 1052-1053, 1056-1057; Summers, *Disciplinary Procedures of Union*, 4 Ind. & Labor Rels. Rev. 15, 28-29 (1950); *Cannery Workers Union (Van Camp Sea Food Co.)*, 159 NLRB 843, 846 (1966).

Thus, in deciding whether to abandon a strike, the individual will be faced with the difficult task of balancing these detriments against the costs to him and his family from remaining on strike. But, if he is willing to endure the former in the interest of alleviating the latter, Section 7 of the Act permits him to make that choice.

2. Without specifically deciding "[t]he extent to which and the conditions under which union members

to resign during an ongoing strike. Cf. *United Auto Workers (John I. Paulling)*, 137 NLRB 901, enforcement denied, 320 F. 2d 12 (C.A. 1).

must be free to resign," the court of appeals held that the September 1968 strike vote was an enforceable promise of all voting members "to stick it out for the duration of the strike" (Pet. App. 10a-11a, 6a). Both as a matter of contract law and federal labor policy the court's waiver theory is unsound.

No member voting to strike in 1968 knowingly made the "waiver" of Section 7 rights found by the court. While a member's support of a union rule could be viewed as a waiver of any right to oppose the rule while he remains a member, it can not reasonably be viewed as a commitment to remain a member, or to support the rule after he has resigned. Thus, while a member may vote for dues of a certain amount, that vote does not commit him to remain a member, or to continue paying such dues once he has left the union. Similarly, while a member may vote for a strike, it does not follow that he intends thereby also to commit himself to remain a union member for the duration of the strike, or to continue to support the strike if he resigns his union membership."

"The charitable subscription cases the court of appeals cited (Pet. App. 6a) do not lead to a different conclusion. The doctrine of promissory estoppel requires, *inter alia*, that the promisee's reliance on the promise be reasonable and justifiable. See *N. Litterio & Co. v. Glassman Construction Co.*, 319 F. 2d 736, 739 (C.A.D.C.); Boyer, *Promissory Estoppel: Requirements and Limitations of the Doctrine*, 98 U. Pa. L. Rev. 455, 460 (1950). Since employees who embark on a strike cannot help but know that strikes often fail because not all of the participants can withstand the hardship and risk of remaining off the job, it is not reasonable or justifiable for a striker to interpret the action of a fellow employee in joining the strike as a commitment to remain on strike for its duration. But, even if that action could

Moreover, the court's waiver theory is inconsistent with federal labor policy as expressed in the Act. Where, as here, the employees voted openly, it is not always clear how many employees voted, and how; and whether the vote represented their true wishes.¹⁸ On the other hand, where the strike vote is by secret ballot, as many are, a probe of how the employees voted would impair the secrecy of the ballot. Cf. *Wilson Athletic Goods Mfg. Co. v. National Labor Relations Board*, 164 F. 2d 637, 640 (C.A. 7). And, to take testimony on the issue of how the employees voted, long after the event, would be of ques-

be viewed as a commitment to support the strike for a specific period, it certainly would not be reasonable to view the commitment as continuing even if the employee later resigns his union membership. Finally, the contract principles applied in the charitable subscription cases cannot override the congressional policy reflected in Section 7 of the National Labor Relations Act (see *supra*, p. 16).

¹⁸ Thus, Kimball, who was the second employee to resign, testified that he attended both the strike and the fine authorization meetings, that he voted for the strike, but neither voted for nor opposed the fine (A. 5, 7, 11). Radziewicz, the first employee to resign, testified that he attended the strike authorization meeting, and "stood up" in favor of the strike because "they all stood up" (A. 17-18). Union officials recognized Radziewicz at the meetings, but not Kimball because they met him for the first time at the Board hearing (A. 28, 29; see also A. 36, 33). There was little, if any, discussion preceding the votes (A. 19, 28, 29). The Trial Examiner observed that "whether all these 31 [the fined employees] were at the [strike authorization] meeting I have no way of knowing" (A. 45). The court of appeals recognized that, "[s]ince the record is somewhat equivocal on this point, * * * it is conceivable that one or more employees will yet come to the Board with the claim that they did not attend either of the strike meetings" (Pet. App. 10a, n. 8).

tionable probative value. Cf. *National Labor Relations Board v. Gissel Packing Co.*, 395 U.S. 575, 608.

But more importantly, to hold that a member's vote for a strike commits him to adhere to the strike for its duration overlooks the fact that a union's right to compel members to participate in union activities, in derogation of the right which Section 7 of the Act gives them to refrain from such activities, is contingent upon the continued existence of the contract of membership. To permit the union to discipline a member on the basis of a strike vote, after his contract of membership has terminated, seriously curtails his Section 7 right to refrain from engaging in union activity. For, as shown (*supra*, p. 17), unanticipated future events may justifiably change an employee's attitude toward the strike. In addition, to construe the employee's vote for the strike as a commitment "to stick it out for the duration of the strike", would tend to impede union democracy by prompting the member to abdicate participation in, and responsibility for, union affairs. To avoid a limitation on his freedom to reassess the strike in the light of future events, the member may decide either not to attend union meetings, or to resign from the union before he has had an opportunity to hear and discuss the reasons for striking and to participate in the strike vote.

In sum, the Board properly concluded that, in the circumstances here, a fair balance of legitimate union and member interests requires that a member be permitted to resign at will from the union, even while a strike is in progress, and thereby avoid a judicially enforceable disciplinary fine. The court below, in

reaching a contrary conclusion, impermissibly intruded upon the Board's "function of striking that [delicate] balance to effectuate national policy [which] is often a difficult and delicate responsibility" (*National Labor Relations Board v. Truck Drivers Union*, 353 U.S. 87, 96).

CONCLUSION

The judgment of the court of appeals should be reversed and the case should be remanded to that court with directions to enforce the Board's order.

Respectfully submitted,

ERWIN N. GRISWOLD,
Solicitor General.

ALLAN A. TUTTLE,
Assistant to the Solicitor General.

PETER G. NASH,
General Counsel,

NORTON J. COME,
Assistant General Counsel,

STANLEY R. ZIRKIN,
Attorney,

National Labor Relations Board.

JUNE 1972.

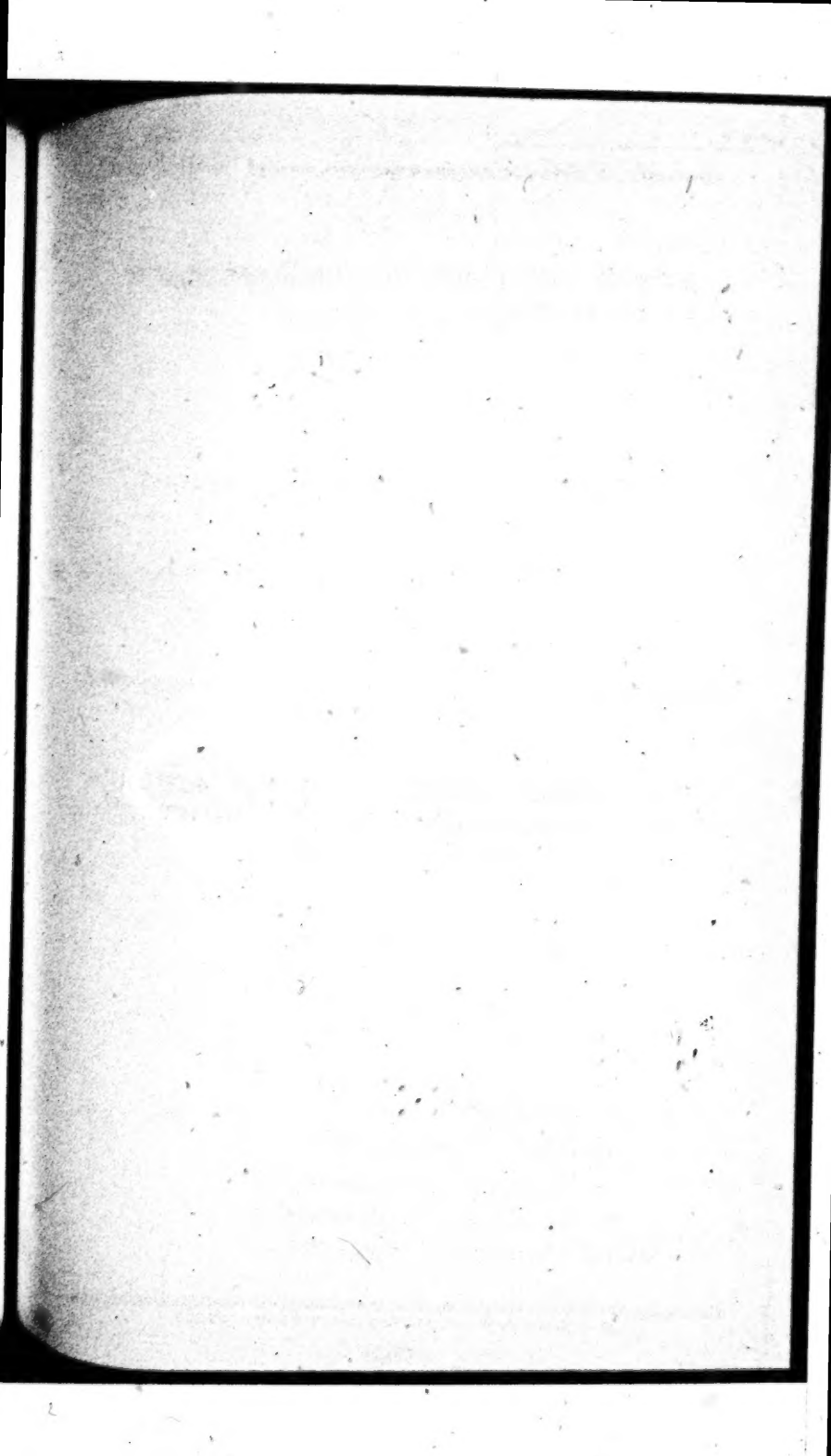


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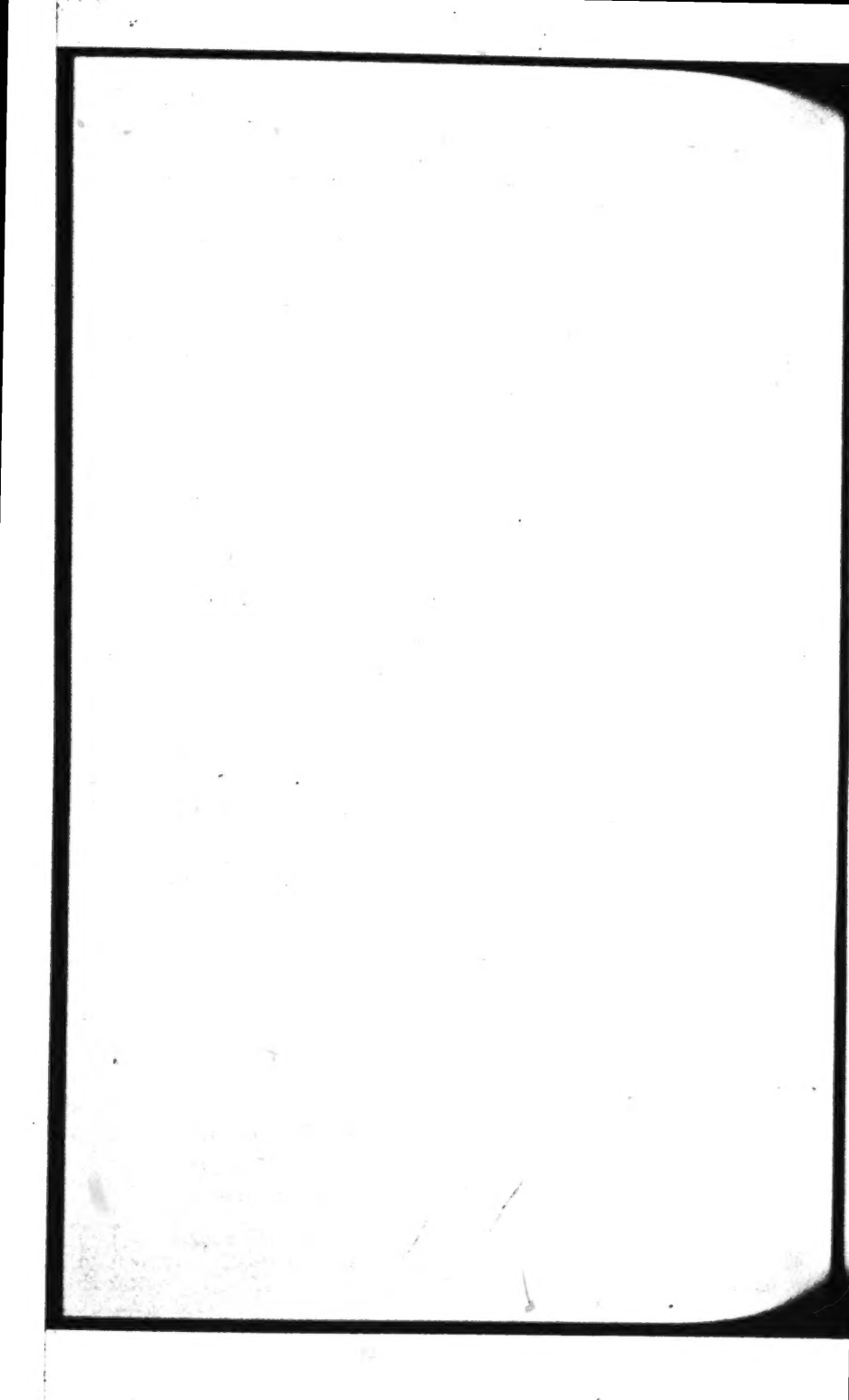
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IN THE
Supreme Court of the United States
OCTOBER TERM, 1972

No. 71-711

NATIONAL LABOR RELATIONS BOARD, *Petitioner*

v.

GRANITE STATE JOINT BOARD, TEXTILE WORKERS UNION
OF AMERICA, LOCAL 1029, AFL-CIO

On Writ of Certiorari to the United States Court of Appeals
for the First Circuit

BRIEF FOR THE INTERNATIONAL ASSOCIATION OF
MACHINISTS AND AEROSPACE WORKERS, AFL-CIO,
AS AMICUS CURIAE

This brief *amicus*, in support of the position of respondent, is filed by the International Association of Machinists and Aerospace Workers, AFL-CIO, with the consent of the parties, pursuant to Rule 42 of the Rules of this Court.

**INTEREST OF THE INTERNATIONAL ASSOCIATION OF
MACHINISTS AND AEROSPACE WORKERS, AFL-CIO**

The International Association of Machinists and Aerospace Workers, AFL-CIO, (IAMAW), is a labor organization composed of nearly 1,000,000 members representing employees in collective bargaining throughout the United States in numerous and varied industries. In calling and conducting strikes in support of the economic goals of the workers it represents, and in maintaining the strike solidarity essential to the effective prosecution of a strike, it is vitally concerned with the question whether a member of a union may escape union discipline, exerted by the levy of a court-collectible fine, for violation of his union obligation to refrain from strikebreaking, by resigning from his union subsequent to the commencement of a strike and engaging in strikebreaking after his resignation. It has therefore through its affiliates been heavily engaged in the litigation of this question.

The Board's lead decision on the question, on which its order in this case rests, is pending before this Court on the petition for a writ of certiorari of an IAMAW affiliate in *Booster Lodge No. 405, International Association of Machinists and Aerospace Workers, AFL-CIO v. N.L.R.B.*, No. 71-1417. Other cases of IAMAW affiliates are either awaiting judicial determination¹ or judicial proceedings have been withheld pending the outcome of this case.² The IAMAW therefore

¹ *N.L.R.B. v. Production Electronic & Aero-Dynamic Lodge No. 1337, IAMAW, AFL-CIO*, C.A. 9, No. 71-3068; see also, *Local 1255, IAMAW v. N.L.R.B.*, 456 F.2d 1214 (C.A. 5, 1972).

² *IAMAW, AFL-CIO, and Local Lodge 598 (Union Carbide Corp.)*, 196 NLRB No. 114, 80 LRRM 1079 (1972); *District Lodge No. 99, IAMAW, AFL-CIO (General Electric Co.)*, 194 NLRB No. 163, 79 LRRM 1208 (1972).

files this brief in order that it may be heard on the question which its affiliates have in litigation and which has pervading significance in making strike decisions.

STATEMENT

The rationale on which the decision of the National Labor Relations Board in this case rests was expressed by it in its lead decision in *Booster Lodge No. 405, International Association of Machinists and Aerospace Workers, AFL-CIO*, 185 NLRB No. 23 (1970) (reprinted *infra*, pp. 1a-13a). The Board's order in that case was in relevant part enforced by the Court of Appeals for the District of Columbia Circuit in *Booster Lodge No. 405, International Association of Machinists and Aerospace Workers, AFL-CIO v. N.L.R.B.*, 79 LRRM 2443 (1972). A petition for a writ of certiorari to review the judgment of the District of Columbia Circuit is pending. *Booster Lodge No. 405, International Association of Machinists and Aerospace Workers, AFL-CIO v. N.L.R.B.*, No. 71-1417.

We believe that the underlying question in this case will be better illuminated by viewing it in the cross-light which is shed by the varying fact situations in which it arises. Accordingly, in the statement which follows, we set forth the facts as they appear in the lead decision in *Booster Lodge No. 405*. In the ensuing argument we confront the question with the perspective afforded by both this case and *Booster Lodge No. 405*.

I. The Strike

The Boeing Company operates a plant at New Orleans, Louisiana, known as the Michoud plant (A. 3). The production and maintenance employees at this

plant are represented in collective bargaining by Booster Lodge No. 405 (the Union) and its parent, IAMAW (A. 3-4). A single employer-wide collective bargaining agreement covers IAMAW-represented units at the Michoud plant and at other facilities of the Company located elsewhere in the United States (*ibid.*) About 1,900 production and maintenance employees work at the Michoud plant (A. 67).

A collective bargaining agreement covering the IAMAW-represented units at the Michoud plant and other Company facilities was in effect from May 16, 1963 through September 15, 1965 (A. 66-67, 3). No accord upon new contract terms was reached upon expiration of the agreement (A. 67, 5). A lawful employer-wide strike over the economic issues in dispute, and picketing in support of the strike, began on September 16, 1965 and ended on October 3, 1965 (A. 67, 5; 85-86).

The strike was preceded by a union meeting at which a strike vote was taken (A. 105, 184, Tr. 21). The Constitution of the IAMAW provides that "a strike vote . . . shall be by secret ballot. In order to declare a strike, such vote must carry by a three-fourths majority of those present and qualified to vote" (G.C. ex. 5, Art. XVIII, sec. 2, p. 54). The Constitution further requires that no strike may be declared without the approval of the Executive Council of the IAMAW, except that, "In an extreme emergency, . . . the I.P. [International President] may authorize a strike pending the submission to and securing the approval of the E.C. [Executive Council]" (*Id.*, Art. XVIII, Secs. 1, 2, pp. 53-54). The By-Laws of the Union provide that, "The approval of a strike, method of declaring a strike, and the settlement of a strike shall be in accordance with applicable provisions of the IAM Constitution" (G.C. ex. 6, p. 4).

A new agreement was reached on October 3, 1965, retroactive to October 2 (A. 67, 5; 85-86). The strike and picketing, which lasted eighteen days, embraced the Michoud plant (A. 67, 5, 25, n. 28).

The new 1965 agreement, like the old 1963 agreement, contained a union security provision known as maintenance of membership. Under this provision employees who are or become union members are required to maintain their membership during the contract term, but employees who are not members need not join if they give timely written notice that they do not desire to become members (A. 67, 4-5; 221-223).

II. The Internal Union Definition of Improper Conduct of a Member and the Internal Union Procedure for Consideration of Alleged Offenses.

The Constitution of the IAMAW defines "improper conduct of a member" and establishes a full trial and appellate procedure to determine the existence and punishment of alleged offenses (A. 214-218).

Among the offenses defined as misconduct of a member is "Accepting employment in any capacity in an establishment where a strike or lockout exists as recognized under this Constitution, without permission" (A. 6; 214). The Constitution provides that this offense, like other "actions or omissions" constituting "misconduct by a member," shall "warrant a reprimand, fine, suspension and/or expulsion from membership, or any lesser penalty or any combination of these penalties as the evidence may warrant after written and specific charges and a full hearing . . ." (A. 68, 5-6; 214). Disqualification from holding office for a period not exceeding five years is expressly enumerated as a penalty (A. 216).

To institute a proceeding to determine the existence and punishment of alleged offenses, a member may

prefer written charges of misconduct against another member, which shall be filed with the president of the Local Lodge who in turn serves a copy on the accused (A. 214). A trial committee is promptly convened, and its first task is to "conduct an investigation of the charges and decide whether there is sufficient substance to warrant a trial hearing being held" (A. 215). If trial is warranted, the accused is informed "of the charges against him and when and where to appear for trial," and "a reasonable time . . . to prepare his defense" is afforded (A. 215). "If a member fails to appear for trial when notified to do so, the trial shall proceed as though the member were in fact present" (A. 215). "Both the plaintiff and the defendant shall have the privilege of presenting evidence and being represented either in person or by attorney (the attorney being a member of the I.A.M.A.W.)" (A. 215).³ Full opportunity to be heard and defend is afforded (A. 215-216).

After the conclusion of the trial, the trial committee is required to "consider all of the evidence in the case and thereafter agree upon its verdict of 'guilty' or 'not guilty.' If the verdict be that of 'guilty,' the trial committee shall then consider and agree upon its recommendation of punishment" (A. 216). The trial committee reports its determination and reasons at the next regular meeting of the Local Lodge (A. 216). The

³ Although not of record in the *Booster Lodge* proceeding, the IAMAW's settled interpretation is "that the word 'attorney' means any member of the IAM, and he does not have to be a licensed lawyer or the member of any bar association." Record, *International Association of Machinists, Oakland Lodge No. 284 (Morton Salt Co.)*, Case No. 20-CB-1776, GC ex. 8, p. 2. See *Sawyers v. Grand Lodge, International Association of Machinists*, 279 F. Supp. 747, 756 (E.D. Mo. 1967).

trial committee first reports its verdict and reasons with respect to guilt or innocence, and its verdict is then "submitted without debate to a vote by secret ballot of the members . . . in attendance" (A. 216). If the members concur in a "guilty" verdict, "the recommendation of the committee as to the penalty" is submitted in a separate report and "voted on by secret ballot of the members then in attendance" (A. 216). "The penalty recommended by the trial committee may be amended, rejected, or another punishment substituted therefor" by the members (A. 216). The members may reverse a "not guilty" verdict of the trial committee, and impose the punishment they deem appropriate (A. 216).

The accused is promptly notified in writing of the decision with respect to his guilt or innocence and of the penalty imposed if found guilty (A. 216). The accused or accuser may appeal to the International President of the IAMAW, who is empowered "to affirm or to modify or reverse, in whole or in part, the decision . . . , or to remand the proceedings for further trial . . . , or to impose any penalty or fine which he deems to be required, including expulsion" (A. 217). Successive appeals are provided from the decision of the International President to the Executive Council of the IAMAW, and from the decision of the Executive Council to the IAMAW convention, "or to the membership at large by submission" of the appeal "to . . . referendum . . ." (A. 217-218).⁴

⁴ The sufficiency of this procedure was examined and upheld by the Court of Appeals for the District of Columbia Circuit in *I.A.M. v. Friedman*, 102 U.S. App. D.C. 282, 252 F.2d 846 (1958), cert. denied, 357 U.S. 926 (1958).

III. The Imposition of Fines for Strikebreaking

Some 143 production and maintenance employees, who were members of the Union when the strike began, crossed the picket line and worked at the Michoud plant during all or part of the period of the strike (A. 67, 5). Some 24 of these strikebreakers made no attempt to resign from the Union during the strike period (A. 67). The remaining 119 strikebreakers did resign from the Union during the strike period (A. 67-68). Of these 119, 61 resigned from the Union and returned to work *subsequent* to their resignation, and 58 resigned from the Union but returned to work *before* their resignation (A. 67).

The Union tried all employees who were members of the Union when the strike began who were known to have worked during the strike, and assessed a penalty against each found guilty of strikebreaking, without regard to whether the accused had resigned from the Union during the strike period or had started to work subsequent to his resignation (A. 3, 13 and n. 11; 198-200). In late October or early November 1965, the appointed trial committee notified each accused (1) that he had been charged with "Accepting employment . . . in an establishment where a strike . . . exists" in violation of the IAMAW Constitution; (2) that the trial committee "has met and feel there is sufficient evidence to hold a trial"; (3) that a trial of the accused had been set for the time and place specified in the notice; and (4) that "you have the right to have an attorney (the attorney being a member of the IAMAW) to defend you. Under the Constitution, if you fail to appear when notified, the trial shall proceed as though the member were in fact present" (A. 68, 6; 228).

The ensuing proceedings resulted in a "Not Guilty" verdict as to two accused, a "No Fine" disposition as to a third, and a "Mistrial" without retrial as to a fourth (A. 239, 127). The remaining accused were found guilty of strikebreaking but a different penalty was assessed against a particular accused depending upon the class within which he fell. Those accused who appeared before the trial committee, apologized, and pledged loyalty to the Union were in effect fined fifty percent of their strikebreaking earnings and disqualified from holding union office for varying periods (A. 68, 7; 188-189, 204-205). The exact penalty assessed against the members of this class reads as follows (A. 229):

The members of Local Lodge No. 405, IAMAW, have assessed the following penalty:

1. That you be fined \$450.00. This fine to be suspended providing you pay 50% of your earnings while working during the strike, and agree to attend all regular meetings of this Lodge during the next twelve (12) months.
2. That you be denied the privilege of holding office in the IAMAW for the time stated at your trial. If you worked less than three (3) days—one (1) year; three (3) to ten (10) days—three (3) years; ten (10) days or more—five (5) years.

Those accused who did not appear for trial and were found guilty were fined \$450 and disqualified from holding office for five years (A. 68, 6-7; 193). The exact penalty assessed against the members of this class reads as follows (A. 230):

The members of Local Lodge No. 405, IAMAW, have assessed the following penalty:

1. That you be fined \$450.00.

2. That you be denied the privilege of holding office in the IAMAW for a period of five (5) years.

The full \$450 fine was assessed against 108 individuals, and the 50-percent-of-strikebreaking-earnings fine against 35 individuals (A. 67, n. 3). All were informed of their right to appeal the decision to the International President of the IAMAW (A. 7, n. 4; 229-230). No appeals were taken (A. 7, n. 4).

Payments of the fines has followed a checkered course. No \$450 fine has been paid (A. 68). Reduced fines have been paid in full in eighteen instances and in part in three instances (A. 68; 238, 127). Payments have averaged \$40 (A. 68; 205-206), and payments in full have ranged from a low of \$10, a mid-point of \$54.80, and a high of \$120 (A. 238-239, 127). On November 3, 1967, the Union wrote to some individuals who had been "fined 50% of the wages"; the Union stated that "your fine has yet to be paid in full", requested that the individual contact the Union "to discuss payment since we are now in the process of turning all fines over to our attorney for collection", and concluded that "Failure to do so could cause your fine to be increased to \$450.00 as was noted at your trial" (A. 68-69, 7-8; 231-232). On February 2, 1966, the Union's attorney had written to 91 individuals fined \$450 requesting "immediate payment in full" and noting that "Your failure to respond promptly will require our filing suit against you . . ." (A. 8; 233, 71, 72). Suit has been instituted against nine individuals in local courts to recover the \$450 fine assessed against each (A. 69, 8; 210-212, 240-241). The Company has undertaken the defense of these suits (A. 5). The outcome of the suits has not been determined (A. 69).

IV. The Board's Decision

The claim before the Board was that the Union restrained or coerced employees in the exercise of their right to refrain from concerted activity for mutual aid or protection in violation of Section 8(b) (1) (A) of the Act. The claim divided into two parts. First, although the Union's rule against strikebreaking is valid, the Union violated Section 8(b) (1) (A) by fining its members in an *unreasonably* large amount for violation of the rule, and by seeking or threatening to seek collection of that allegedly unreasonable fine by court action. Second, independently of the reasonableness of the fine, the Union violated Section 8(b) (1) (A) by fining in any amount those persons who had resigned from the Union for that strikebreaking activity in which they engaged *subsequent* to their resignation.

The first claim—the reasonableness of the fine—was dismissed by the Board (*infra*, p. 9a, n. 16). It relied for its rationale on its decision in *David O'Reilly*, 185 NLRB No. 22, 75 LRRM 1008 (1970), which it issued on the same day as the opinion in this case. In *David O'Reilly*, one member dissenting, the Board held that, given the settled validity of a rule requiring members "to honor an authorized picket line" and the settled permissibility of punishing breach of the rule by "union fines (or court enforcement of same)", Congress did not intend "to have the Board regulate the size of these fines and establish standards with respect to their reasonableness" (75 LRRM at 1010). Rather, related as it is to "the fairness of union discipline meted out to protect a legitimate union interest" (*id.* at 1011), the issue of the reasonableness of a fine is to be determined by a court in a proceeding to collect or set aside the fine. The "local courts are the more logical

tribunals for the establishment of standards of reasonableness" (*id.* at 1010).

The Board, one member dissenting, decided the second claim—pertaining to the situation of a person who had resigned from the Union—in favor of the view that the Union violated Section 8(b)(1)(A) by fining a person who had resigned from membership for engaging in strikebreaking *subsequent* to his resignation. The premise of the Board's decision is that, while a member is bound to observe his union's valid rules during his period of membership, "the contract between the member and the union becomes a nullity upon his resignation. Both the member's duty of fidelity to the union and the union's corresponding right to discipline him for breach of that duty are extinguished" (*infra*, pp. 6a-7a). Accordingly, the Union "violated Section 8(b)(1)(A) of the Act by imposing disciplinary fines upon resigners from its ranks, for acts committed after their resignations" (*infra*, p. 9a). However, as to those resigners who engaged in strikebreaking *before* their resignation, the Union retained "the right to discipline the employees for prior strikebreaking. The effect of these employees' resignations was only to extinguish the Union's future authority over them" (*infra*, p. 10a).

Member Gerald A. Brown dissented from this branch of the Board's decision (*infra*, p. 12a). He would hold that resignation in the midst of a strike does not free a member to engage in strikebreaking; resignation should not be given effect to allow the member to shed his obligation of union fealty at the very moment that it matters most. He stated in part that (*infra*, p. 13a):

Each of the employees involved here, and in all other situations of which I am aware, was a mem-

ber of the Union in all senses of the word before the strike began. Thus the fealty owed by a member to his union in effect came into play when the strike was authorized and began, and a "resignation" at that point was already a disloyal action from the standpoint of the Union and his fellow members. Moreover, I cannot conceive of a case arising where a union would "fine" someone who had never been its member at all. It is only because the employees here were, in the eyes of the Union, and pursuant to the Union's constitution and by-laws, still Union members, that the fines would have any impact at all upon them. In this respect, whether employees are still members of the Union for purposes of imposition of a Union fine, the proviso to 8(b)(1)(A), in express terms, applies to a union's rules for acquisition or retention of membership.

V. The Decision of the Court of Appeals for the District of Columbia Circuit

On review, the Court of Appeals for the District of Columbia Circuit, in agreement with the Board, affirmed its conclusion that "the Union violated Section 8(b)(1)(A) of the N.L.R.A. by imposing fines upon employees, and by threatening or attempting enforcement of such fines, because of those employees' *post-resignation* conduct in working at the Company plant during the authorized work stoppage" (79 LRRM at 2450). However, in disagreement with the Board, the Court of Appeals held that "it is clearly the obligation of the N.L.R.B. to resolve the question of reasonableness where such an issue is appropriately raised" (*id.* at 2452), and it directed the Board on remand to determine "the questions relating to the reasonableness of the fines imposed by the Union" (*id.* at 2455).

VI. The Petition for a Writ of Certiorari

On May 1, 1972, the Union filed its petition for a writ of certiorari to review the judgment of the District of Columbia Circuit (No. 71-1417), and it presented the following two questions (Pet. p. 2):

1. Whether a member of a union may escape union discipline, exerted by the levy of a court-collectible fine, for violation of his union obligation to refrain from strikebreaking, by resigning from his union subsequent to the commencement of a strike and engaging in strikebreaking after his resignation.

2. Whether the National Labor Relations Board is empowered to determine the reasonableness of a fine assessed by a union against a member for violating its valid rule against strikebreaking.

Of these two questions, the first only is directly presented in this case, and the argument which follows is therefore confined to it.

SUMMARY OF ARGUMENT

The Board holds that, in the absence of an explicit contrary restriction upon the effect of resignation, a member's resignation from his union in the midst of a strike frees him forthwith from his union obligation to refrain from strikebreaking in that strike for its future duration. It predicates this conclusion on its view that, as a matter of contract law, the "contract-constitution" "becomes a nullity" upon resignation, and *ipso facto* the "member's duty of fidelity to the union and the union's corresponding right to discipline for breach of that duty are extinguished" instantaneously (*infra*, pp. 6a-7a). It does not consider that the duty to refrain from strikebreaking for the dura-

tion of the existing strike may be implied notwithstanding resignation. It fortifies its rigid view of contract law by drawing upon a so-called "statutory policy" said to militate against the implication.

The Board's view of contract law is radically wrong. Treating the union constitution as a contract, it is elementary that ascertainment of the existence, meaning and consequences of a promise depends as much upon implications of fact and operation of law as it does upon explicit terms. Fleshing out a contract so as to supply the unexpressed but fair and reasonable rule for the intentionally or inadvertently omitted situation is a commonplace in the interpretation of any agreement.

Given this orientation the question is whether the union constitution is justly interpreted to mean, where it is silent upon the subject, that a mid-strike resignation frees the member forthwith from his existing union obligation to refrain from breaking the very strike which he was duty-bound to observe when it began. In "every contract of association there inheres a term binding members to loyal support of the society in the attainment of its proper purposes" *Polin v. Kaplan*, 257 N.Y. 277, 177 N.E. 833, 834 (1931). This duty of loyal support finds its cardinal expression in the obligation to refrain from strikebreaking. Every member depends on every other to withhold his labor from the struck employer in order to make the strike effective. The least that each member is entitled to expect of the other is that all who are pledged to the common cause at the beginning of the struggle will fulfill their obligation to carry through for its duration. Accordingly, a mid-strike resignation from a union, however efficacious it may be to sever other member-

ship obligations, should not as a matter of the fair interpretation of the relationship be given the effect of relieving the resigner instantaneously of his duty to refrain from strikebreaking at the very moment when its observance counts most. For "mutual reliance is implicit in all strike votes; many employees would hesitate to forego several weeks or months of pay if they knew their cohorts were free to cross the picket line at any time merely by resigning from the union." *N.L.R.B. v. Granite State Joint Board, Textile Workers Union of America, Local 1029, AFL-CIO*, 446 F.2d 369, 372 (C.A. 1, 1971), cert. granted, 405 U.S. 987 (1972).

There is no "statutory policy" which militates against implying a duty to refrain from strikebreaking during the existing dispute notwithstanding resignation. This Court held in *N.L.R.B. v. Allis-Chalmers Mfg. Co.*, 388 U.S. 175, 191 (1967), that Section 8(b) (1)(A) of the Act does not embrace "a prohibition against the imposition of fines on members who decline to honor an authorized strike and attempts to collect such fines." And it does not precisely because the "economic strike against the employer is the ultimate weapon in labor's arsenal for achieving agreement upon its terms, and 'the power to fine or expel strikebreakers is essential if the union is to be an effective bargaining agent . . .'" (*id.* at 182). This necessary maintenance of strike solidarity embraces within its natural scope disallowance of a mid-strike resignation to justify breaking the very strike which the member was duty bound to observe at its inception. The intrinsic nature of a strike commits a union member to stick with it for its duration, and it offends every concept of loyalty and duty to permit mid-voyage defection. The

statute does not require a union to permit a mid-strike resignation to be used as an escape hatch to break the strike. The statute is no more hospitable to the strikebreaker-resigner than it is to the strikebreaker-member.

In short, a union constitution, faithfully interpreted in keeping with its fair purport, bars treating resignation in the course of a strike as a license to engage in strikebreaking for the future duration of the existing strike, and "statutory policy" does not militate against this implication but is instead quite in harmony with it.

ARGUMENT

A MEMBER'S MID-STRIKE RESIGNATION FROM HIS UNION DOES NOT FREE HIM FROM HIS UNION OBLIGATION TO REFRAIN FROM STRIKEBREAKING IN THAT STRIKE FOR ITS DURATION.

I. Preliminary Statement

The Board holds that, in the absence of an explicit contrary restriction upon the effect of resignation, a member's resignation from his union in the midst of a strike frees him from his union obligation to refrain from strikebreaking in that strike for its future duration. The premise of this conclusion is that the obligations assumed upon the acquisition of membership subsist only during the period of membership and therefore terminate forthwith upon resignation. At the heart of this premise is the Board's concept of the "membership relationship" established by "a contract-constitution" to which the individual "becomes a party" upon "joining the union" (*infra*, p. 6a). In the Board's view the contract-constitution "becomes a nullity" upon resignation, and *ipso facto* the "member's duty of fidelity to the union and the union's corresponding right to discipline for breach of that duty are extinguished" forthwith (*infra*, p. 7a). To fortify

its view as to the meaning of a union constitution as a matter of contract law, the Board draws upon the "statutory policy to prevent coercion of employees for exercising Section 7 rights" safeguarded against union encroachment by section 8(b)(1)(A) of the Act (*infra*, pp. 8a-9a).

It is thus the Board's thesis that, absent an express contrary stipulation, resignation results in blanket nullification of the applicability of the union constitution to govern the former member's future conduct for any purpose, and requires absolute and abrupt extinction of all existing obligations in total disregard of any circumstances. It is this thesis which we contest as fundamentally fallacious. Treating the union constitution as a contract, it is elementary that "the law of contracts attempts the realization of reasonable expectations that have been induced by the making of a promise,"⁵ and that ascertainment of the existence, meaning and consequences of a promise depends as much upon implications of fact and operation of law as it does upon express terms.⁶ Thus, although wanting in explicitness, a promise may nevertheless be "fairly . . . implied", for "the whole writing may be 'instinct with an obligation', imperfectly expressed."⁷ And so, in "construing contracts, courts must look not only to the specific language employed, but also to the subject matter contracted about, the relationship of the parties, the circumstances surrounding the transaction, or in other

⁵ 1 Corbin, *Contracts*, 2 (1950).

⁶ 3 Corbin, *Contracts*, 276-355 (1950).

⁷ Cardozo, J., in *Wood v. Duff-Gordon*, 222 N.Y. 88, 90, 118 N.E. 214 (1917). See also, *Marrinan Medical Supply v. Ft. Dodge Serum Co.*, 47 F.2d 458, 463-465 (C.A. 8, 1931); *Local 174, Teamsters v. Lucas Flour Co.*, 369 U.S. 95, 104-106 (1962).

words place themselves in the same position the parties occupied when the contract was entered into, and view the terms and intent of the agreement in the same light in which the parties did when the same was formulated and accepted."*

This Court just last term gave forthright expression to the indispensability of implication in determining the existence and meaning of a contract. "... [T]he law of contracts in most, if not all, jurisdictions long has employed a process by which agreements, though not formalized in writing, may be 'implied.' 3 Corbin on Contracts, §§ 561-672A. Explicit contractual provisions may be supplemented by other agreements implied from 'the promisor's words and conduct in the light of the surrounding circumstances.' *Id.*, at § 562. And, '[t]he meaning of [the promisor's] words and acts is found by relating them to the usage of the past.' *Ibid.*" *Perry v. Sinderman*, 40 U.S.L.W. 5087, 5090 (S. Ct., 1972).

Given this orientation the question is whether the union constitution is justly interpreted to mean, where it is silent upon the subject, that a mid-strike resignation frees the member forthwith from his existing union obligation to refrain from breaking the very strike which he was duty-bound to observe when it began. In "every contract of association there inheres a term binding members to loyal support of the society in the attainment of its proper purposes. . . ." This duty of loyal support finds its cardinal expression in the obligation to refrain from strikebreaking. Every member depends on every other to withhold his labor from the

* *Miller v. Miller*, 134 F.2d 583, 588 (C.A. 10, 1943).

* *Polin v. Kaplan*, 257 N.Y. 277, 177 N.E. 833, 834 (1931).

struck employer in order to make the strike effective. The least that each member is entitled to expect of the other is that all who are pledged to the common cause at the beginning of the struggle will fulfill their obligation to carry through for its duration. Accordingly, a mid-strike resignation from a union, however efficacious it may be to sever other membership obligations, should not as a matter of the fair interpretation of the relationship be given the effect of relieving the resigner instantaneously of his duty to refrain from strikebreaking at the very moment when its observance counts most. For "mutual reliance is implicit in all strike votes; many employees would hesitate to forego several weeks or months of pay if they knew their cohorts were free to cross the picket line at any time merely by resigning from the union." *N.L.R.B. v. Granite State Joint Board, Textile Workers Union of America, Local 1029, AFL-CIO*, 446 F.2d 369, 372 (C.A. 1, 1971), cert. granted, 405 U.S. 987 (1972).

We turn to an elaboration of this position. We shall show, in essence, (1) that a union constitution, faithfully interpreted in keeping with its fair purport, bars treating resignation in the course of a strike as a license to engage in strikebreaking for the future duration of the existing strike, and (2) that "statutory policy" does not militate against this implication but is instead quite in harmony with it.

II. This Court's Validation in *Allis-Chalmers* of the Imposition of a Court-Collectible Union Fine as a Discipline Against Strikebreaking.

We begin with this Court's decision in *N.L.R.B. v. Allis-Chalmers Mfg. Co.*, 388 U.S. 175 (1967). The Court answered "no" to the question "whether a union which threatened and imposed fines, and brought suit

for their collection, against members who crossed the union's picket line and went to work during an authorized strike against their employer, committed the unfair labor practice under § 8(b)(1)(A) of the National Labor Relations Act of engaging in conduct 'to restrain or coerce' employees in the exercise of their right guaranteed by § 7 to 'refrain from' concerted activities.'" 388 U.S. at 176.¹⁰ Underpinning this holding was recognition that strikebreaking was fundamentally offensive to union solidarity essential to effective economic action (*id.* at 180, 181-182):

National labor policy has been built on the premise that by pooling their economic strength and acting through a labor organization freely chosen by a majority, the employees of an appropriate unit have the most effective means of bargaining for improvements in wages, hours, and working conditions....

* * *

Integral to this federal labor policy has been the power in the chosen union to protect against erosion its status under that policy through reasonable discipline of members who violate rules and regulations governing membership. That power is particularly vital when the members engage in strikes. The economic strike against the employer is the ultimate weapon in labor's arsenal for achieving agreement upon its terms, and "the power to fine or expel strikebreakers is essential if the union is to be an effective bargaining agent. . . ." Provisions in union constitutions and bylaws for fines and expulsion of recalcitrants, including strikebreakers, are therefore commonplace and were commonplace at the time of the Taft-Hartley amendments.

¹⁰ See also, *Rocket Freight Lines Co. v. N.L.R.B.* 437 F.2d 302, 205-206 (C.A. 10, 1970); *U.O.P. Norplex Division v. N.L.R.B.*, 445 F.2d 155 (C.A. 7, 1971).

The "history of congressional action does not support a conclusion that the Taft-Hartley prohibitions against restraint or coercion of an employee to refrain from concerted activities included a prohibition against the imposition of fines on members who decline to honor an authorized strike and attempts to collect such fines. Rather, the contrary inference is more justified in the light of the repeated refrain throughout the debates on § 8(b)(1)(A) and other sections that Congress did not propose any limitations with respect to the internal affairs of unions, aside from barring enforcement of a union's internal regulations to affect a member's employment status" (*id.* at 195).

III. A Union Constitution, Although Silent on the Subject of the Effect of Resignation, Cannot Reasonably Be Interpreted To Authorize Strikebreaking Subsequent to a Mid-Strike Resignation Where the Individual Was a Member of the Union at the Inception of the Strike, for the Implied Obligation of Loyalty Binds Him Notwithstanding Resignation To Refrain From Strikebreaking for the Duration of the Existing Strike.

Given the duty confirmed by *Allis-Chalmers* to refrain from strikebreaking, which every member assumes upon acquisition of membership, the question is whether resignation in the midst of a strike forthwith terminates that duty with respect to that very strike. The answer turns on whether the union constitution contemplates that a mid-strike resignation authorizes instant conversion of the duty to refrain from strikebreaking into a freedom to break the existing strike. It is to the last degree unimaginable that the union constitution is fairly capable of that interpretation.

The constitution is the union's charter of government. It orders the relationship of the union and its members to preserve and promote organizational effec-

tiveness. A prominent organizational need is the ability of the union to prosecute a strike. It is impossible to suppose, from the viewpoint of either the union as an institution or of any member as part of that institution, that the constitution allows desertion from the ranks in the midst of a strike. "... [N]egotiations are carried on with the prospect of an immediate or possible break of diplomatic relations and a resort to force. If the break comes, the union goes to war and the need for discipline is obvious. The employer is the enemy; giving him any aid or comfort is treason. To supply him with labor is to furnish him the weapon with which the battle is fought and is clear treason."¹¹

It is plain that the union constitution as the governing instrument cannot be reasonably interpreted to mean that a mid-strike resignation has the expected effect of authorizing the defector to break the existing strike. On the contrary, "derived from implied covenants of good faith and fair dealings" which inhere in every contract,¹² the least that the constitution contemplates is that the obligation to refrain from strike-breaking, undertaken before the strike and activated by it, shall endure for the duration of the strike.

The obvious escapes understanding only because the constitution is silent upon the effect of a mid-strike resignation. But silence presents the interpretative question; it does not decide it. Silence simply puts the trier to the task of extrapolating the probable meaning of the constitution based on the subject matter, rela-

¹¹ Summers, *Disciplinary Powers of Unions*, 3 Ind. & Lab. Rel. Rev. 483, 489 (1950).

¹² *Local 1912, I.A.M. v. United States Potash Co.*, 270 F.2d 496, 498 (C.A. 10, 1959), cert. denied, 363 U.S. 845 (1959).

tionship, and interests to be served in the light of the circumstances from which the problem emerges.

Fleshing out a contract so as to supply the unexpressed but fair and reasonable rule for the intentionally or inadvertently omitted situation is a commonplace in the interpretation of a collective bargaining agreement.¹³ This interpretative function is no less a necessity, if perhaps less forthrightly recognized, in the interpretation of other contracts.¹⁴ "Parties to a contract may, either intentionally or by oversight, omit certain terms or leave them to be determined in the future. When litigation ensues, the court, if it is not to frustrate the parties' dominant intent to make a contract, must often fill the gaps 'if it is possible to reach a fair and just result.' Although courts declare that they will not make a contract for the parties, they must frequently complete the contract by filling in the omitted terms. Such completion is, in a very real sense, an act of creation."¹⁵

This approach is indispensable to the realistic reading of a union constitution. "Membership in a union

¹³ *United Steelworkers of America v. Warrior & Gulf Navigation Co.*, 363 U.S. 574, 578-582 (1960). See also, *Perry v. Sinderman*, 40 U.S.L.W. 5087, 5090 (S. Ct., 1972).

¹⁴ Summers, *Collective Agreements and the Law of Contract*, 78 Yale L.J. 525, 529-530 (1969).

¹⁵ *Id.* at 551. "... [A] sound judicial tradition stresses concern for context, purposes, needs, and consequences in resolving the ambiguities and the gaps that exist in all agreements. See, Llewellyn, *What Price Contract? An Essay in Perspective*, 40 Yale L.J. 704, 746 n. 86 (1931); *Lewis v. Benedict Coal Corp.*, 361 U.S. 459, 475-476 . . . (1960) (dissenting opinion)." Meltzer, *Labor Law, Cases, Materials, and Problems*, 746 (1970).

contemplates a continuing relationship with changing obligations as the union legislates in a monthly meeting or in annual conventions. It creates a complex cluster of rights and duties expressed in a constitution. In short, membership is a special relationship."¹⁶ We are required to ask whether that special relationship has during its pre-strike subsistence induced reliance on and created expectations of unity for the strike's duration so that the duty of loyalty inhering in the relationship should not in fairness be abruptly severed by a resignation in the midst of a strike. In considering that question there is no more room for dogmatic assertion that resignation must forthwith willy-nilly terminate all obligations flowing from the membership relationship than there would be for a cognate claim that divorce must automatically end all obligations flowing from the marriage contract.

The perspective which the Board lacks is provided by looking to what courts do when dealing with the termination of a contractual relationship. Thus, "where an exclusive franchise dealer under an implied contract, terminable on notice, has at the instance of a manufacturer or supplier invested his resources and credit in establishment of a costly distribution facility for the supplier's product, and the supplier thereafter unreasonably terminates the contract and dealership without giving the dealer an opportunity to recoup his investment, a claim may be stated."¹⁷ So too, a "provi-

¹⁶ Summers, *Legal Limitations on Union Discipline*, 64 Harv. L. Rev. 1049, 1056 (1951).

¹⁷ *Clausen & Sons v. Theo. Hamm Brewing Co.*, 395 F.2d 388, 391 (C.A. 8, 1968). See also, Gellhorn, *Limitations on Contract Termination Rights-Franchise Cancellations*, 1967 Duke L.J. 465.

sion which would limit the termination rights of a party may be implied into the bargain under some circumstances."¹⁸ Similarly, an agreement of indeterminate duration is terminable, but only after a reasonable lapse of time and upon reasonable notice.¹⁹ Likewise, the liberty to quit employment is subject to the disability that in future employment the employee may not exploit the use of confidential information acquired in the former employment to the disadvantage of the former employer.²⁰ Similarly, resignation of a carrier from a shipping conference does not bar the conference from trying the carrier for preresignation infractions in accordance with *changed* procedures instituted *subsequent* to resignation.²¹ Finally, just last term, in considering the status of a teacher whose employment was not protected by "an explicit tenure provision" and who had not been rehired for the next school year, this Court observed that "there may be an unwritten 'common law' in a particular university that certain employees shall have the equivalent of tenure" despite the absence of an "explicit tenure system" ²²

In all these situations the courts implied, or asserted the power to imply, just and reasonable conditions upon the termination of the relationship which the

¹⁸ *Clausen & Sons v. Theo. Hamm Brewing Co.*, 395 F.2d 388, 391, n. 3 (C.A. 8, 1968).

¹⁹ *Miller v. Miller*, 134 F.2d 583, 588-589 (C.A. 10, 1943); *Boeing Airplane Co. v. N.L.R.B.*, 85 U.S. App. D.C. 116, 174 F.2d 988, 991 (1949).

²⁰ *N.L.R.B. v. I.L.G.W.U.*, 274 F.2d 376 (C.A. 3, 1960); *Junker v. Plummer*, 320 Mass. 76, 67 N.E.2d 667 (1946).

²¹ *Pacific Coast European Conference v. F.M.C.*, 439 F.2d 514 (C.A.D.C., 1970).

²² *Perry v. Sinderman*, 40 U.S.L.W. 5087, 5090 (S. Ct., 1972).

agreement did not in terms express. No less is required in this case. Given the crucial expectation of utter membership solidarity during the critical period of a strike, and the rightful reliance of every member on every other to withhold his labor for the duration of the strike, a mid-strike resignation does not justly and reasonably comprehend lifting the existing duty to refrain from strikebreaking in the current controversy. The duty antedated the strike; observance of it was activated by the strike; performance should be required for the duration of the strike.

To meet this showing all that the Board states in its brief in this case (p. 16), echoing the view of the District of Columbia Circuit in *Booster Lodge* (79 LRRM at 2448), is that "it is generally recognized that courts will not usually imply offenses not specified in a union's constitution or bylaws." But this is a poor crutch. First, as the author whom the District of Columbia Circuit cites to support its view makes clear, this stricture is limited to the innovation of a prescript in a situation where no rule at all exists; it does not apply to the interpretation of the scope of a rule which is in being.²³

²³ Summers, *Legal Limitations on Union Discipline*, 64 Harv. L. Rev. 1049, 1060-61 (1951):

The prevailing rule that a member may not be punished for implied offenses cannot be justified on the ground that it protects a member from being disciplined for conduct which he believes to be proper. When the conduct is as flagrant as in some of the cases mentioned, the member is fully aware that he has acted improperly. Furthermore, the rule gives little practical protection to union members. It does not compel unions to define punishable offenses and to specify the penalties to be inflicted. Instead, the gaps are filled by such vague catchalls as "disloyalty," or "conduct detrimental to the best interest of the union." Union resolutions are made enforceable by including the offense, "disobedience to regu-

Second, even as so limited, the author disapproves the approach, observing that it permits a member to escape discipline although he "is fully aware that he has acted improperly", "gives little practical protection to union members", and serves instead merely to relieve judges of the task of judging.²⁴ Third, this Court has discredited the approach as a matter of federal law, as it emphasized in *International Brotherhood of Boilermakers v. Hardeman*, 401 U.S. 233 (1971). This Court concluded, upon an examination of the legislative history of section 101(a)(5) of the Labor-Management Reporting and Disclosure Act, that Congress deliberately declined to limit permissible discipline to violation of "a previously published, written union rule", or to miscreant conduct that "the union had proscribed prior to the union member having engaged in such activity" (*id.* at 242-244). The federal approach instead is to entrust unions with self-governing autonomy (*id.* at 242, 244-245):

We find nothing in either the language or the legislative history of § 101(a)(5) that could justify . . . a substitution of judicial for union authority to interpret the union's regulations in order to determine the scope of offenses warranting discipline of union members.

* * *

. . . § 101(a)(5) was not intended to authorize courts to determine the scope of offenses for which

lations, rules, mandates and decrees of the Local or International," and difficulties with penalties are eliminated by making all offenses punishable by fine, suspension, or expulsion.

The function of the rule against implied offenses is not nearly so much to protect the members, as it is to protect the courts. If the courts recognized implied obligations, they would have to determine what constituted a "serious offense."

²⁴ See preceding note.

a union may discipline its members. And if a union may discipline its members for offenses not proscribed by written rules at all, it is surely a futile exercise for a court to construe the written rules in order to determine whether particular conduct falls within or without their scope.

Lastly, the discredited approach invoked by the Board and the District of Columbia Circuit is dubious even as an accurate rendition of the common law. "It would seem that where a member's act is clearly in derogation of an obvious group interest, either because the group's dedication to particular ideas or goals is clear or because the member's act is especially hostile to more general group interests, the association could properly expel under a very vaguely worded rule, or indeed without any rule." Note, *Developments in the Law, Judicial Control of Actions of Private Associations*, 76 Harv. L. Rev. 985, 1018 (1963).

In short, if a union is to be faulted for construing its prohibition against strikebreaking to apply to a mid-strike resigner for the duration of the existing strike, it should be on a better basis than the invocation of an interpretative crutch which either refrains from exercising judgment or conceals the basis for it. Federal law is better served by candid confrontation of a problem than by seeking refuge in rote.

IV. The Rule That, Where a Union Constitution Is Silent on the Subject of Resignation, a Member Is at Liberty To Resign at Will, Does Not Support the View That the Mid-Strike Resigner Is Free To Engage in Strikebreaking in the Existing Strike.

To support its view that a mid-strike resigner is free to engage in strikebreaking in the existing strike subsequent to his resignation, the Board apparently invokes the rule that, where the union constitution is silent upon

the subject, members are at liberty to resign forthwith at will (*infra*, p. 7a and n.11). But invocation of the rule to support strikebreaking is quite inapt. For the situation in which that rule has been applied is utterly different from the present situation, and regard for the difference bars application of the rule to sanction strikebreaking.

In all situations in which the Board has applied the rule, the question has been whether under a union security agreement known as maintenance of membership, by the terms of which a nonmember need not join the union but an existing member must retain his membership in the union, membership is required on the part of a person who had resigned from the union before the effective date of the agreement.²⁵ To that question the Board has answered that, as the union constitution did not limit the time or manner of resignation, a person ceased to be a member on resignation and therefore the agreement did not require membership of that person because he was a nonmember when it became effective.

Accordingly, all that the rule apparently invoked by the Board stands for is that, in the application of a maintenance of membership agreement, a person becomes a nonmember on resignation in the absence of a contrary specification in the union constitution. This rule means that a member who resigns during a strike

²⁵ *Aeronautical Industrial District Lodge 751*, 173 NLRB 450, 452 (1968); *Local 340, International Brotherhood of Operative Potters*, 175 NLRB 756 (1969); *Local Union No. 621, United Rubber Workers*, 167 NLRB 610 (1967); *New Jersey Bell Telephone Co.*, 106 NLRB 1322, 1324 (1953), enforced *sub nom. Communication Workers of America v. N.L.R.B.*, 215 F.2d 835, 838 (C.A. 2, 1954).

is not obligated to join a union under the terms of a maintenance of membership agreement entered into at the end of the strike because he had become a nonmember before the effective date of the agreement. But it means no more.

Considered in the context of its application, therefore, neither the rule nor any rationale supporting it persuasively relates to the question this case presents, namely, whether a mid-strike resignation frees the erstwhile member to engage in strikebreaking in an existing strike. It is one thing to say that a person becomes a nonmember on resignation so that an ensuing maintenance of membership agreement is not applicable to him. Or that a person becomes a nonmember on resignation so that he is no longer under a financial obligation to pay future dues and assessments to the union. It is quite another thing, however, to say that liberty to engage in strikebreaking in the current controversy is the reasonable and expected consequence of a mid-strike resignation. Only an either-or mentality, requiring that things must be all one or all another, can fail to consider whether the same act may not entail a diversity of consequences. Moderate interpretative sophistication encounters no strain in finding that a particular status may have different attributes for different purposes.²⁸ Accordingly, to say that a mid-strike resignation renders a subsequent maintenance of membership agreement inapplicable to the resigner is not to begin to say that it frees the resigner to engage in strikebreaking in the existing strike.

²⁸ *E.g.*, *Phelps Dodge Corp. v. N.L.R.B.*, 313 U.S. 177, 190-193 (1941).

V. The Board's Mistaken Reliance on Expressions in Opinions of This Court Said To Suggest the View That Instant Freedom To Engage in Strikebreaking Is the Necessary Consequence of a Mid-Strike Resignation.

The Board apparently takes the position that certain expressions in opinions of this Court suggest the view that instant freedom to engage in strikebreaking is the necessary consequence of a mid-strike resignation. We turn to this claim.

1. The Board states that this Court in *N.L.R.B. v. Allis-Chalmers Mfg. Co.*, 388 U.S. 175, 196-197 (1967), "expressly refused to pass on the legality of the imposition of a fine upon 'limited members' of the union", from which the Board deduces that "in this reservation there was the implication that such a fine when levied against nonmembers constitutes a form of restraint and coercion proscribed by Section 8(b)(1)(A)" (*infra*, p. 7a). The Board deduces too much from too little.

In *Allis-Chalmers*, under one type of union membership available in that case, "an employee is required only to become and remain 'a member of the Union . . . to the extent of paying his monthly dues . . .'" (388 U.S. at 196). As to that type of limited member—one who has undertaken only to pay dues to the union—this Court stated that whether the prohibition of Section 8(b)(1)(A) of the Act "would apply if the locals had imposed fines on members whose membership was in fact limited to the obligation of paying monthly dues is a question not before us and upon which we intimate no view" (*id.* at 197).

To intimate no view as to whether a member whose obligation is limited to paying dues may be disciplined for strikebreaking is to intimate no reservation relevant to this case. A member whose union obligation is lim-

ited to paying dues is by negative implication a member who has not undertaken to fulfill any other obligation of membership; and it is surely arguable that a person who has not bound himself to refrain from strikebreaking cannot be fined for it. But we deal in this case, as the Court did in *Allis-Chalmers*, with persons who had full membership status (*id.* at 196-197),²⁷ and full membership embraces the obligation to refrain from strikebreaking (*id.* at 181-182, *supra*, pp. 20-22). The question in this case, not presented in *Allis-Chalmers*, is whether a mid-strike resignation frees the full member to engage in strikebreaking in the existing strike. We have shown that it does not, and nothing in this Court's reservation concerning a limited member whose union obligation is confined to paying dues remotely suggests that it does.

2. In *Scofield v. N.L.R.B.*, 394 U.S. 423 (1969), this Court held that Section 8(b)(1)(A) of the Act did not bar a union from fining a member for violating a valid union rule against exceeding a production ceiling. In reaching this conclusion the Court noted *inter alia* that the rule was enforced against "union members who are free to leave the union and scape the rule" (*id.* at 430). According to the Board, "[b]y observing that members could 'leave the union and escape the rule,' the Court seems to have envisaged the possibility that union members could, indeed, resign membership and avoid discipline" (*infra*, p. 8a).

Since in *Scofield* the violation of the rule occurred during the term of a collective bargaining agreement,

²⁷ An evidentiary showing is required to establish that a member has less than full membership status. As the Court stated, "Allis-Chalmers offered no evidence in this proceeding that any of the fined employees enjoyed other than full union membership. We will not presume the contrary." *Allis-Chalmers*, 388 U.S. at 196.

and since the union security clause in that agreement obligated an existing member to remain a member for the duration of the agreement (394 U.S. at 424, n.1), presumably the Court meant, when it said that "union members . . . are free to leave the union and escape the rule," that the member was free to renounce all union obligations except the payment of union dues. For a union security agreement, while it may do no more, may indubitably bind a person to pay union dues and initiation fees at the risk of losing his job if he does not. "Under § 8(a)(3) the extent of an employee's obligation under a union security agreement is 'expressly limited to the payment of initiation fees and monthly dues. . . . 'Membership' as a condition of employment is whittled down to its financial core.' " ²⁸

Accordingly, when the Court states that "union members . . . are free to leave the union and escape the rule," it envisages the member's exercise of his option during the contract term to convert from a full member (subject to all union obligations) to a limited member (subject only to the obligation to pay dues). But the option to convert to limited membership in *Scofield*, like the status of limited membership reserved in *Allis-Chalmers*, has nothing to do with the question that the instant case presents. Granted that a member may change from full to limited membership during the contract term, or may resign his membership altogether upon expiration of the contract, the question still remains of the fair effect to be given to a mid-strike resignation as it relates to the rule against strikebreaking. The member by resigning of course escapes the rule against

²⁸ *N.L.R.B. v. Allis-Chalmers Mfg. Co.*, 388 U.S. 175, 197, n. 37 (1967), quoting from *N.L.R.B. v. General Motors Corp.*, 373 U.S. 734, 742 (1963).

strikebreaking in any *future* controversy, but does that mean that resignation frees him from observance of the rule at least for the duration of the existing strike? Surely that question has not been answered—it has not even been broached—by the statement in *Scofield* that a member could escape observance of the production ceiling rule by leaving the union. There is a world of difference between a production ceiling rule and a strikebreaking rule, and therefore a world of difference in the time when leaving the union may fairly abrogate observance of the one rule but not the other. And it is just the demands of a strike situation, which the Court did not at all address in *Scofield*, which make the difference.

Accordingly, this Court's phrasal reference to "union members who are free to leave the union and escape the rule" (394 U.S. at 430) cannot be read with the indiscriminate openendedness that the Board attributes to it. As the First Circuit observed in this case (446 F.2d at 374), "We do not understand this language to mean that union members must be free to leave the union and escape the rule at any time and under all circumstances. Indeed, we do not see how that interpretation could be correct since in *Scofield* itself the Court recognized that a valid union security clause was in effect at the time of the alleged unfair labor practice."

3. The Board quotes from this Court's opinion in *N.L.R.B. v. Marine and Shipbuilding Workers of America*, 391 U.S. 418, 424 (1968), that "§ 8(b)(1)(A) assures a union freedom of self-regulation where its legitimate internal affairs are concerned." The Board then states that "the imposition of discipline upon non-members can hardly be deemed an internal affair" (*infra*, p. 8a). The Board begs the question.

The effect to be given to a mid-strike resignation on enforcement of a rule against strikebreaking is surely part of a union's "legitimate internal affairs." If the union constitution had in terms stated that a mid-strike resignation does not relieve the member of his existing duty to refrain from strikebreaking in the current controversy, the union could hardly be faulted on the ground that it was legislating on a matter which was none of its internal business (*infra*, pp. 43-49). Just and reasonable regulation of the terms on which a member may resign is an obvious function of any membership association.

The Board's error lies in its unparticularized use of the word "nonmembers." The Board packages as "nonmembers" persons who have never been union members with persons who seek to resign their existing membership and assumes that both are to be treated alike. But the two are obviously not the same in fact, and whether for particular purposes they should be treated differently in law is the question presented. That question cannot be satisfactorily answered by question-begging assumptions as to the content of "internal affairs" or the fungibility of "nonmembers."

4. The upshot is that the quotations which the Board snips from the Court's opinions simply do not answer the present question. The present question is new. There is no point to the pretense that the answer has already been given.

VI. The Suggestion That a Member Is Bound To Refrain From Strikebreaking for the Duration of the Strike Notwithstanding Resignation Only if at Its Inception He Individually Assented to the Strike.

The First Circuit held, in disagreement with the Board, that in the circumstances of this case a member's mid-strike resignation did not free him to engage in strikebreaking subsequent to his resignation. In *Booster Lodge No. 405*, the District of Columbia Circuit held, in agreement with the Board, that in the circumstances of that case a member's mid-strike resignation did free him to engage in strikebreaking subsequent to his resignation.

In denying enforcement of the Board's order, the First Circuit suggested that the circumstances in this case may be different from those in *Booster Lodge* (also known as the *Boeing* case) (446 F.2d at 372, n. 5):

... [T]he *Boeing* case, *supra*, may be distinguishable on its facts since in *Boeing* the fines were authorized by a general provision in a union constitution, rather than by a specific decision of the membership adopted in the context of a particular strike. In *Boeing* the Board emphasized that "the Union had not warned members about the possible imposition of disciplinary measures." Also, the *Boeing* opinion did not consider whether any of the employees who crossed the picket line had originally voted to support the strike.

In *Booster Lodge*, the District of Columbia Circuit embraced the distinctions suggested by the First Circuit, and in reliance on them stated that "we believe that the [*Granite State*] decision is inapposite to the present fact situation," reasoning that (79 LRRM at 2449):

Although the court in *Granite State* upheld the right of the union involved to impose fines on

strikebreakers for post-resignation activity, it emphasized that a specific set of facts was present which it believed rendered such a result equitable, and it specifically recognized that these considerations were not present with respect to the instant Booster Lodge 405 case. In *Granite State*, the Board conceded that all of the fined employees had voted in favor of the strike in question. It is also important to note that the fines had not been imposed pursuant to a general provision in the union constitution, as here, but rather in accordance with a specific proclamation which had been unanimously adopted by the membership after the work stoppage commenced. See 446 F.2d at 370, 372 n. 5. Furthermore, all of those who were disciplined in *Granite State* had been expressly prewarned of possible punishment for strikebreaking, while the employees with whom we are herein concerned received no such pre-strikebreaking notification. Because of these distinguishing facts, we refuse to apply the rationale of *Granite State* to the instant factual situation.

The First Circuit thus holds, and the District of Columbia Circuit does not disagree, that a member despite his resignation is at the least bound to refrain from strikebreaking for the duration of a strike when at the outset of the strike he made his own *individual* decision to go out on strike. But the District of Columbia Circuit holds, unlike the First Circuit which reserves decision on that question, that a member by resigning may renounce the institutional decision to strike at least in the absence of a showing that he individually assented to the decision initially.

This difference suggests the possibility that a member is bound notwithstanding resignation to refrain from strikebreaking for the duration of the strike only if at its inception the member individually supported

the decision to strike. The Board does not agree, nor do we, that the legal consequence of resignation can turn on whether or not the member at the inception of the strike individually supported or opposed the group decision to strike. But our reasons sharply differ.²⁹

1. The essence of the solidarity indispensable to effective strike action is that a member is bound by the institutional decision to strike whether or not he was individually opposed to that group decision. A member is required to refrain from strikebreaking despite his dissent from the decision to strike. A member does not by his dissent create a personal option to refrain from striking by resigning. Membership is not divided into two classes, one class composed of those members who by individually assenting to strike are bound to that choice for the duration of the strike, and another class

²⁹ Although the First and District of Columbia Circuits mutually acknowledged distinctions between *Granite State* and *Booster Lodge*, it is apparent that the underlying rationale of the two courts is in conflict. While the First Circuit suggested the distinctions between *Booster Lodge* and *Granite State*, it explicitly stated that "[w]e express no opinion, however, as to whether these distinctions are determinative" (446 F.2d at 372, n. 5, see also *id.* at 374, n. 8). The District of Columbia Circuit in *Booster Lodge*, while purporting to rest on the distinctions that the First Circuit identified, nevertheless noted that "[t]o the extent that the First Circuit's decision in *Granite State* may be read to support *Booster Lodge* 405's position here, we respectfully decline to follow it" (79 LRRM 2449, n. 19). Subsequent to both decisions the Court of Appeals for the Fifth Circuit rejected the Board's application of its postresignation holding to the levy of a fine in which the sole sanction for nonpayment was debarment from union membership. *Local 1255, IAMAW v. N.L.R.B.* 456 F.2d 1214 (1972). The Fifth Circuit noted that "[t]o the extent that [the District of Columbia Circuit's decision in] *Boeing* may be read to support the Board's position that all forms of discipline for postresignation picket-line-crossing are barred by the Act, we respectively decline to follow it." *Id.* at 1216, n. 1.

composed of those members who by individually dissenting from the strike are free to abandon the strike when and as they choose by resigning. The meaning of a union is that the contrariety of individual choice is forged into a single will once the group decision is taken. The reality of unified action is that each member is bound for the duration of the strike by the group decision to strike, whatever his own original personal choice, which he cannot escape by resigning.

2. To turn the allowability of strikebreaking subsequent to resignation on a showing of a member's individual original dissent from the strike decision is incompatible with the variety of means by which unions make strike decisions. Federal law does not, and state law cannot, prescribe the means by which unions make strike decisions (*International Union, United Automobile Workers v. O'Brien*, 339 U.S. 454 (1950)); indeed, federal law "does not require majority authorization for any strike" (*id.* at 458). Instead, the means by which strike decisions are made within a union are exclusively a matter of union self-government and internal organization. *N.L.R.B. v. Wooster Division of Borg-Warner Corp.*, 356 U.S. 342, 349-350 (1958).

There are three principal methods by which strike decisions are made within a union: (a) by open vote of the members; (b) by secret ballot of the members; and (c) by the members' delegation of the strike decision to a strike committee or similar body. Only where the decision is made by open vote is it at all ascertainable what the member's original choice may have been, and even then the evidentiary problems of reliable after-the-fact determination would be formidable. Where the decision is by committee, the member's only formal participation in the process is to designate the constituency

of the committee; he does not himself vote. Where the decision is by secret ballot, the whole point of that method is that the member's individual vote shall not be known. Accordingly, when two of the three principal means by which strike decisions are made do not and cannot disclose the member's original individual choice, it is a practical impossibility to make the legal consequence of resignation turn on whether at the inception of the strike the member supported or opposed the strike decision.

3. The predominant means by which strike decisions within a union are made is by secret ballot.³⁰ The method required of its subordinate units by the IAMAW is typical. Thus, in *Booster Lodge*, in order to authorize the strike, a strike vote by secret ballot was mandatory, a three-fourths majority vote in favor of the strike was necessary to call the strike, and the strike call was further dependent on having the sanction of the Executive Council of the International Union (*supra*, p. 4).³¹

As thus presented in the typical posture of the IAMAW's method of calling a strike, the heart of the question is whether the minority is bound by the majority's choice to strike made in a secret ballot election. The answer rests in the indispensability to effective labor action of binding the entirety of the members for the duration of the strike to the institutional decision

³⁰ See the unpublished study, *Collective Bargaining and Strike Provisions of National Union Constitutions*, prepared for the use of the Federal Mediation and Conciliation Service by Herbert J. Lahne, a Department of Labor economist, reprinted *infra*, p. 15a.

³¹ In 1970, the IAMAW amended its Constitution to require a two-thirds rather than a three-fourths majority vote to call a strike.

to strike that the majority has made. And the essence of a secret ballot is its secrecy, a secrecy which must be broken if effect is to be given to the notion that a member is bound by the institutional decision only if he himself individually favored it when it was made. In short, "the majority rules" (*J. I. Case Co. v. N.L.R.B.*, 321 U.S. 332, 339 (1944)), and within the compass of effective strike action there is no room for individual defection from the collective decision, whether or not the member was personally for or against the strike at its inception.

VII. There Is No "Statutory Policy" Which Militates Against Interpreting a Prohibition Against Strikebreaking as Requiring a Mid-Strike Resigner To Refrain From Strikebreaking for the Future Duration of the Existing Strike.

We return to our starting point. In *Booster Lodge*, the provision of the IMAW Constitution pursuant to which the resigners were disciplined proscribed "accepting employment . . . in an establishment where a strike . . . exists" (*supra*, p. 5). This provision does not specify whether or not it applies to bar strikebreaking in an existing strike subsequent to resignation. The Board would read the prohibition as a bar against "accepting employment . . . in an establishment where a strike . . . exists" *except* following resignation. The Union interprets it as a bar against "accepting employment . . . in an establishment where a strike . . . exists" *notwithstanding* resignation. As between the two rival interpretations of a union constitutional provision—one barring strikebreaking *except* following resignation and the other barring it *notwithstanding* resignation—the choice is obvious. A union constitution premised on maintaining strike solidarity simply cannot be rationally read to allow strikebreaking. We need

hardly add that "Courts are reluctant to substitute their judgment for that of union officials in the interpretation of the union's constitution, and will interfere only where the official's interpretation is not fair or reasonable." *Vestal v. Hoffa*, 451 F.2d 706, 709 (C.A. 6, 1971), cert. denied, 40 U.S.L.W. 3543, May 15, 1972. See also, *International Brotherhood of Boilermakers v. Hardeman*, 401 U.S. 233, 241-245 (1971).

Insight may be afforded by looking at the issue as if the result for which we contend had been incorporated in the constitution in so many words. The constitution would then read substantially as follows: resignation in anticipation or in the course of a strike shall not relieve the member from his duty to refrain from strikebreaking in the upcoming or existing strike. Such an explicit restriction would doubtless be given effect. A constitution may limit resignation to the manner and on the conditions prescribed, so long as the restrictions are just and reasonable.²² To require that a present member refrain from strikebreaking in an existing or impending strike is obviously a just and reasonable restriction upon resignation.

In the absence of such explicitness, then, the question is whether the implication of that restriction better approximates the just and reasonable expectation of the parties than does the implication that resignation forthwith frees the erstwhile member to engage in strikebreaking. Since it is a union constitution that we are interpreting, and the imperative of a membership relationship which is at issue, it is perfectly patent that the implied terms on which the relationship may be dissolved fairly and reasonably contemplate that the exist-

²² *N.L.R.B. v. International Union, United Automobile Workers*, 320 F.2d 12 (C.A. 1, 1963).

ing obligation of loyalty to the union politic to refrain from strikebreaking shall at the least endure for the duration of the current controversy in which the entirety of the membership is engaged and in which utter unity is indispensable.

But, says the Board, "statutory policy" is opposed to that implication (*infra*, p. 8a). The District of Columbia Circuit similarly says that "an extremely important national policy militates against the imposition of such an implied obligation" (79 LRRM at 2448). But neither is willing to commit itself to the view that an explicit restriction against strikebreaking in an existing strike subsequent to resignation would violate Section 8(b)(1)(A) of the Act. The Board on brief contents itself with the statement that it "has not yet had occasion to consider whether a different accommodation would be warranted where the union's constitution or bylaws expressly limited the right of a member to resign during an ongoing strike" (p. 17, n.14). The District of Columbia Circuit similarly expresses "no opinion . . . concerning the legality" of such a provision, and it likewise "intimate[s] no view regarding the legality of any such provision expressly imposing a continuing obligation on any resigning member to refrain from strikebreaking during a work stoppage which was properly commenced prior to the time of the resignation" (79 LRRM at 2449, n. 20).

This straddle will not do. The statute either does or does not allow a union to bind a mid-strike resigner to a duty to refrain from strikebreaking in an existing strike. If it does, no "statutory policy" is offended because the restriction is implied rather than express. A statute which countenances an express restriction does not permit the invention of a "statutory policy"

which condemns an implied restriction. The Board and the District of Columbia Circuit cannot shelter their ambivalence "in that circumambient aura, so often euphemistically described as 'the policy of the statute.'"²²

It is therefore necessary to face up to the question that the Board insinuates but does not choose to confront. And the answer is clear. An implied restriction against strikebreaking by a mid-strike resigner does not, any more than an explicit restriction would, run afoul of the bar of Section 8(b)(1)(A) against restraining an employee in the exercise of his right to refrain from strike activity conferred by Section 7 of the Act. This is inherent in the teaching of *Allis-Chalmers*. The Court held in *Allis-Chalmers* that Section 8(b)(1)(A) does not embrace "a prohibition against the imposition of fines on members who decline to honor an authorized strike and attempts to collect such fines" (*supra*, p. 22). And it does not precisely because the "economic strike against the employer is the ultimate weapon in labor's arsenal for achieving agreement upon its terms, and 'the power to fine or expel strikebreakers is essential if the union is to be an effective bargaining agent . . .'" (*supra*, p. 21). This necessary maintenance of strike solidarity embraces within its natural scope disallowance of a mid-strike resignation to justify breaking the very strike which the member was duty bound to observe at its inception. The intrinsic nature of a strike commits a union member to stick with it for its duration, and it offends every concept of loyalty and duty to permit mid-voyage defection. The statute does not require a union to permit

²² L. Hand, J., concurring in *McComb v. Scerbo*, 177 F.2d 137, 141 (C.A. 2, 1949).

a mid-strike resignation to be used as an escape hatch to break the strike.

This conclusion is demonstrable by returning to the specific statutory premise on which *Allis-Chalmers* rests. The predicate of that decision is that imposition of a fine for violation of a valid union rule is not under any circumstances open to contest under section 8(b)(1)(A) if the fine is enforceable only by debarment from union membership for nonpayment. Writing for the majority, Mr. Justice Brennan stated that (388 U.S. at 191-192):

At the very least it can be said that the proviso preserves the rights of unions to impose fines, as a lesser penalty than expulsion, and to impose fines which carry the explicit or implicit threat of expulsion for nonpayment.

The dissenters appear to share this view. Mr. Justice Black wrote for them, and while first seeming to reserve this matter (388 U.S. at 203), he finally stated that (*id.* at 214):

... I have already indicated that the proviso to § 8(b)(1)(A) may preserve the union's right to impose fines which are enforceable only by expulsion and that expulsion was the common mode of enforcing fines at the time the section was adopted.

The issue which divided the Court in *Allis-Chalmers* was, not whether section 8(b)(1)(A) prohibited a fine that was enforceable solely by debarment from union membership, but whether court action to collect the fine was a permissible added sanction. The Court of course held that it was. "A lawsuit is and has been the ordinary way by which performance of private money obligations is compelled" (*id.* at 192).

The identical analysis is applicable to the strike-breaker-resigner as to the strikebreaker-member. If the penalty imposed on the resigner were a fine, but if enforcement of the fine were limited to debarment of the resigner from reacquisition of membership in the union until the fine were paid, the sanction for nonpayment would be expressly privileged by the proviso to section 8(b)(1)(A), for it would be confined to "the right of the labor organization to prescribe its own rules with respect to the acquisition or retention of membership therein" In this situation, as the Court of Appeals for the Fifth Circuit has held, the "sanction for nonpayment of the fine was . . . confined to the 'acquisition or retention of membership,' a domain which is reserved to the Union under the Act" *Local 1255, IAMAW v. N.L.R.B.*, 456 F.2d 1214, 1217, (1972). The Fifth Circuit explained that (*ibid.*):

We believe the Union's right to expel a member, or deny readmission to an ex-member, for not paying a fine is clearly protected by the proviso to § 8(b)(1)(A). The proviso makes no distinction between acts done while a member and those done while not a member. Either may be taken into consideration in determining who is to be admitted to membership or retained as a member. There is no doubt that the Union could have expelled . . . [the defector] unconditionally for strikebreaking. It seems that if the Union may absolutely bar him from membership it may conditionally bar him subject to the payment of a fine.

In summary, we hold only that a union member who resigns during a strike and crosses his union's picket line to return to work may be fined by the union for his postresignation strikebreaking when the fine is enforceable only by expulsion from the union.

At this juncture we reach the same point in the analysis that the Court confronted in *Allis-Chalmers*. As

a fine for strikebreaking, enforceable by debarment from the union until the fine is paid, may be levied alike against the strikebreaker-member and the strikebreaker-resigner, the only question which remains is whether court action to collect the fine is a permissible added means of enforcement. The Court in *Allis-Chalmers* held that court enforcement of the fine was allowable against the strikebreaker-member, and there is no slightest reason why it should not also be allowable against the strikebreaker-resigner. In either case the "efficacy of a contract is precisely its legal enforceability. A lawsuit is and has been the ordinary way by which performance of private money obligations is compelled" (388 U.S. at 192).

But, we are told on brief, as a constituent of a member's "right" to refrain from strike activity, a member should be free to abandon the strike without risking union discipline for his defection, whenever the hardship of striking becomes greater than he cares to bear, so long as he is willing by resigning to give up the benefits of union membership; this is called "reasonable accommodation" (Bd. br. pp. 17-18, 21). We call it strikebreaking. We are "accommodated" out of the means of enforcing discipline to maintain the strike solidarity essential to effective strike action. We are in the name of a "fair balance" required to favor the summer soldier and the sunshine patriot to the detriment of the steadfast striker who rightfully relied on group unity when the strike was undertaken. And we are gifted with this cost-benefit analysis, not by the Board whose opinion will be searched in vain for it, but by "appellate counsel's *post hoc* rationalizations for agency action", a wholly impermissible basis on which to sustain administrative decision. *N.L.R.B. v. Metropolitan Life Ins. Co.*, 380 U.S. 438,

442-444 (1965); see also *F.T.C. v. Sperry and Hutchinson Co.*, 405 U.S. 233, 245-250 (1972).

Indeed, were the Board to say that a mid-strike resignation must be given effect to allow subsequent strikebreaking, it would arrogate to itself a role which is statutorily denied it. A union's refusal to countenance a mid-strike resignation as an excuse for strikebreaking is a union's use of one part of its economic weaponry to secure satisfactory contract terms. To maintain that a union is required by law to tolerate mid-strike desertion through resignation is thus to assert the statutory power to divest the union of one means of waging economic warfare. Yet it is central to this statute that the Board has no such power. It is not to function "as an arbiter of the sort of economic weapons the parties can use in seeking to gain acceptance of their bargaining demands"; it is not "to sit in judgment upon every economic weapon the parties to a labor contract negotiation employ . . ." *N.L.R.B. v. Insurance Agents' International Union*, 361 U.S. 477, 497-498 (1960). The Board has no authority to "balance" away the union's or the employer's means of self-protection. *American Ship Building Co. v. N.L.R.B.*, 380 U.S. 300, 316-318 (1965); *N.L.R.B. v. Brown*, 380 U.S. 278, 290-292 (1965).

In short, when a union reads its prohibition against "accepting employment . . . in an establishment where a strike . . . exists" to bar strikebreaking in an existing strike subsequent to resignation, it is making an interpretation of the prohibition which is in utter harmony with its underlying purport. And when it is said that such an interpretation runs afoul of "statutory policy," the assertion bespeaks ignorance of what strike solidarity means and disrespects the limitation on the

Board's power against intermeddling in the economic weaponry employed to wage economic warfare.

CONCLUSION

For the reasons stated the judgment below should be affirmed.

Respectfully submitted,

PLATO E. PAPPS

LOUIS POULTON

1300 Connecticut Avenue, N.W.
Washington, D. C. 20036

BERNARD DUNAU

912 Dupont Circle Building, N.W.
Washington, D. C. 20036

*Attorneys for International
Association of Machinists &
Aerospace Workers, AFL-CIO*

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APPENDIX I

UNITED STATES OF AMERICA BEFORE THE NATIONAL LABOR RELATIONS BOARD

Case 15-CB-779

Booster Lodge No. 405, International Association of Machinists and Aerospace Workers, AFL-CIO and The Boeing Company

Decision and Order

On December 30, 1968, Trial Examiner Ramey Donovan issued his Decision in the above-entitled proceeding, finding that the Respondent had engaged in certain unfair labor practices and recommending that it cease and desist therefrom, and take certain affirmative action, as set forth in the attached Trial Examiner's Decision. Thereafter, the General Counsel, the Charging Party, and the Respondent each filed exceptions to the Decision, together with supporting briefs. The Charging Party filed a reply brief. Subsequently in response to an invitation of the Board, the Charging Party and the Respondent filed supplemental briefs. In response to the same invitation, statements of position were filed by the National Association of Manufacturers, and by the American Federation of Labor and Congress of Industrial Organizations, joined by the International Brotherhood of Teamsters and the International Union, UAW, as *amici curiae*.

The Board has reviewed the rulings of the Trial Examiner made at the hearing and finds that no prejudicial error was committed. The Board has considered the Trial Examiner's Decision, the exceptions and briefs, the reply brief, the supplemental briefs, the statements of position *amici curiae*, and the entire record in the case. The Board adopts the Trial Examiner's findings of fact, but adopts his conclusions and recommendations only to the extent that they are consistent with the decision herein.

The essential facts of this case are not in dispute. Booster Lodge No. 405, International Association of Machinists and Aerospace Workers, AFL-CIO, hereinafter called IAM or the Union, and Boeing were parties to a collective-bargaining agreement effective from May 16, 1963 through September 15, 1965.¹ Upon the expiration of the contract, the Union commenced a lawful strike against Boeing at its Michoud plant in New Orleans, Louisiana, and at various other locations. The strike lasted 18 days. On October 2, 1965, a new contract was signed. The strikers returned to work on the following day. Both contracts contained maintenance-of-membership clauses, which required new employees to notify both the Union and the Employer of their desire not to join the Union within 40 days of accepting employment.

During the strike period, some 143 employees of a unit of approximately 1900 production and maintenance workers crossed the picket line and reported for work. All had been members of the Union during the contract period. One group of strikebreaking employees, numbering some 24, made no attempt to resign from the Union. The remaining 119 strikebreaking employees submitted their voluntary resignations, in writing, to both the Union and the Employer.² Many

¹ At the time of the execution of the 1963 agreement, Booster Lodge 405 was not in existence. Boeing's Michoud, Louisiana, plant was considered a "Remote Location" unit, identified with the "Primary Location" unit at Seattle-Renton, Washington. Production and maintenance employees in the Michoud unit were represented by Aeronautical Industrial District Lodge No. 751, IAM, AFL-CIO, Seattle, a signatory to the contract with Boeing. Booster Lodge No. 405 came into existence sometime later in 1963, but the contract was not modified to reflect this event.

² The Union objects to the fact that notices of resignation were sent to District Lodge 751 rather than to Booster Lodge 405. However, since Booster Lodge 405 was not a party to the original contract, as explained in footnote 1 *supra*, it would appear that employees who notified District Lodge 751 were attempting to comply with contractual requirements. Moreover, District Lodge 751 notified Booster Lodge 405 of all resignations.

resigned from membership prior to reporting for work during the strike. Others resigned during the course of the strike, but returned to work before submitting their resignations.³ All resignations were submitted after the expiration of the original contract and before the signing of the new one. All were submitted prior to the imposition of discipline by the Union.

In late October or early November 1965, the Union notified all strikebreaking employees that charges had been preferred against them under the International Constitution for "Improper Conduct of a Member" in "accepting employment . . . in an establishment where a strike . . . exists." Employees were advised of the dates of their trials, which were to be held even in their absence, and of the availability of union-member counsel. Prior to the strike, the Union had not warned members about the possible imposition of disciplinary measures. However, the IAM constitution provides that members found guilty of misconduct after notice and a hearing are subject to "reprimand, fine, suspension, or expulsion from membership, or any lesser penalty or combination." The constitution sets no maximum dollar limitation on fines.

Fines were imposed on all strikebreaking employees, regardless of whether, or when, they had resigned from the Union. Employees who did not appear for trial were fined \$450, as were those who appeared and were found guilty. The fines of employees who appeared for trial, apologized, and pledged loyalty to the Union were reduced to 50 percent of strikebreaking earnings. The level of fines was set by the union membership. There is no indication of the

³ Four-hundred-and-fifty dollar fines were imposed on 108 employees. Of these, 61 had resigned their union membership prior to reporting for work during the strike, and others resigned during the course of the strike. Reduced fines were imposed on 35 employees. The record as to the timing of their resignations is not clear.

method of computation. Strikebreaking employees earned between \$2.38 and \$3.63 per hour, or between \$95 and \$145 per 40-hour week. In some instances, earnings during the strike were supplemented by the inclusion of bonus or premium rates for weekends and overtime.

Reduced fines have been paid in some instances. Payments have averaged \$40. None of the \$450 fines has been paid. The Union has sent out written notices that the matter has been referred to an attorney for collection, that suit will be filed upon nonpayment of fines, and that reduced fines will be increased for \$450 in the event of nonpayment. The Union has filed suit against nine individual employees to collect the fines (plus attorney's fees and interest). The outcome of the suits has not been determined.

A principal issue in this case is the legality of the Respondent's imposition of disciplinary fines upon individuals who had resigned from the Union before engaging in the conduct for which the discipline was imposed. The complaint alleges, and the Trial Examiner found, that the Respondent's action in fining employees in this category violated Section 8(b)(1)(A) of the Act. We agree with the Trial Examiner's conclusion.⁴ However, as the Trial Examiner has not fully spelled out his reasoning in this regard, and in light of the views of our dissenting colleague, we believe that further explication of our reasoning is appropriate here.

Under Section 8(b)(1)(A) of the Act, it is an unfair labor practice for a labor organization to "restrain or coerce employees in the exercise of rights guaranteed in Section 7." Included among those rights is the right to refrain from

⁴ The Trial Examiner's reference to a "compounded" violation of Section 8(b)(1)(A) perhaps implies that the violation is merely derivative. On the contrary, we find, as spelled out more fully herein, that the very imposition of a fine on nonmembers violates the Act, regardless of the amount of the fine.

engaging in any of the protected concerted activities enumerated at the beginning of Section 7.

The levy of a fine is calculated to force an individual both to pay money and to engage in particular conduct against his will. This is true regardless of the ultimate collectibility of the fine. A man who is held up at gunpoint is coerced whether or not the gun is loaded. As with the levy of a fine, the coercion lies in the calculated threat and, as has been held, the "argument that the fines imposed were not collectible in a court of law, even if accepted is beside the point."⁶ The imposition of a fine has immediate coercive consequences. Faced with the possibility of action against him, the employee may well be, for practical purposes, impelled to forego his statutory right not to honor the Union's picket line rather than risk involvement in a lawsuit whose outcome he cannot predict.⁷ Or, should he choose to take that risk, he will find it necessary to hire counsel whose services he ordinarily would not require.

The Board has long recognized that a fine is inherently coercive.⁸ Yet in situations where a union imposes disciplinary fines on its *members* the Board has held that the union does not violate Section 8(b)(1)(A).⁹ The basis of the Board's holdings in these early fine cases was the proviso

⁶ See *N.L.R.B. v. American Bakery and Confectionery Workers' Local Union 300*, 411 F.2d 1122, 1126, (C.A. 7), enfg. 167 NLRB 596.

⁷ We do not share the confidence of our dissenting colleague in the ability of the ordinary employee to evaluate the ultimate legal consequences of the union's act. Nor would we require him to attempt to do so.

⁸ See e.g. *Minneapolis Star & Tribune Co.*, 109 NLRB 727, 738.

⁹ *Ibid.* See also *Local 283, United Automobile, Aircraft & Agricultural Implement Workers of America, UAW-AFL-CIO (Wisconsin Motor Corp.)*, 145 NLRB 1097; *Local 248 et al., United Automobile, Aerospace & Agricultural Implement Workers of America, AFL-CIO (Allis-Chalmers Mfg. Co.)*, 149 NLRB 67.

to Section 8(b)(1)(A), which exempts "the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership" from the coverage of that section. Although a union's membership rules may well be coercive, their enactment is specifically protected by the Act. In *Minneapolis, supra*, the Board construed the levy of the fine as the prescription of a rule with respect to the retention of union membership, and held that the union's conduct, which was protected by the proviso, therefore did not violate Section 8(b)(1)(A).

In affirming the Board's conclusions in *Allis-Chalmers*, the Supreme Court held that the body of Section 8(b)(1)(A) was not intended to reach the conduct of a labor organization in imposing and enforcing a fine upon its members for crossing an authorized picket line.⁹ Thus, the Court found it unnecessary to pass on the Board's holding that the proviso protected the union's conduct. Nevertheless, the basis of the Court's holding was the underlying relationship between the union and its members. Throughout the opinion, the Court emphasized the right of unions to regulate their own internal affairs. Reference was made to the "contract theory" of union membership. And, finally, the Court cited the proviso to Section 8(b)(1)(A) as offering "cogent support for an interpretation of the body of Section 8(b)(1)(A) as not reaching the opposition of fines and attempts at court enforcement."

The significance of the membership relationship is that it establishes the union's authority over its members. In joining a union, the individual member becomes a party to a contract-constitution. Without waiving his Section 7 right to refrain from concerted activities, he consents to the possible imposition of union discipline upon his exercise of that right.¹⁰ But the contract between the member and

⁹ *N.L.R.B. v. Allis-Chalmers Mfg. Co.*, 388 U.S. 175.

¹⁰ The power to discipline recalcitrant members is essential to the union's self-preservation. This coercive power is protected by the proviso to Section 8(b)(1)(A).

the union becomes a nullity upon his resignation. Both the member's duty of fidelity to the union and the union's corresponding right to discipline him for breach of that duty are extinguished.

In the case at bar, the Union's right to discipline employees terminated upon the employees' submission of their letters of resignation.¹¹ The attempted imposition of discipline for subsequent conduct was beyond the powers of the Union.¹² It was not consented to by the employees. Nor, in our view, was it protected by the proviso to the Act.

The holding in *Allis-Chalmers* was carefully restricted to the facts of that case. The Court expressly refused to pass on the legality of the imposition of a fine upon "limited members" of the union.¹³ It appears to us that in this reservation there was the implication that such a fine when levied against nonmembers constitutes a form of restraint and coercion proscribed by Section 8(b)(1)(A). The decisions in two subsequent fine cases reinforce that implication.

¹¹ The Union takes the position that voluntary resignation from its ranks is impossible of achievement because its constitution and by-laws set forth no procedure for such resignations. As this argument is contrary to long-standing Board precedent, we reject it here. See *Communications Workers of America, CIO (New Jersey Bell Tel. Co.)*, 106 NLRB 1322, enfd. 215 F.2d 835 (C.A. 2); *Local Union No. 621, United Rubber, Cork, Linoleum & Plastic Workers of America, AFL-CIO (Atlantic Research Corp.)*, 167 NLRB 610; *District Lodge 751, International Association of Machinists & Aerospace Workers, AFL-CIO (Boeing Co.)*, 173 NLRB No. 71. Moreover, as indicated *infra*, the Supreme Court in the *Scofield* case expressly sanctioned the strategy of leaving the union to avoid discipline.

¹² The Union's disciplinary authority was, as we hold, limited to conduct engaged in during the period of membership.

¹³ While the court did not specifically refer to the fining of nonmembers, the cited reservation indicates the relevance of the membership issue.

In its recent *Scofield* opinion,¹⁴ the Supreme Court summarized its construction of Section 8(b)(1)(A) as follows:

[The section] leaves a union free to enforce a properly-adopted rule which reflects a legitimate union interest, impairs no policy Congress has imbedded in the labor laws, and is reasonably enforced *against union members* who are free to leave the union and escape the rule. [Emphasis supplied.]

This suggests that the prohibitions of Section 8(b)(1)(A) encompass union rules which do not conform with the enumerated qualifications. Included in this latter category is a rule enforced against nonunion members. By observing that members could "leave the union and escape the rule," the Court seems to have envisaged the possibility that union members could, indeed, resign membership and avoid discipline.

In the *Shipbuilding Workers Case*,¹⁵ the Supreme Court found unlawful a union's attempt to discipline members for filing charges with this Board before exhausting their intra-union remedies. The Court construed Section 8(b)(1)(A) as assuring a union freedom of self-regulation only "where its legitimate internal affairs are concerned." But the imposition of discipline upon nonmembers can hardly be deemed an internal affair.

Our dissenting colleague treats *Allis-Chalmers* as if it existed in a vacuum, overlooking subsequent decisions and the statutory provisions themselves. But to extend the *Allis-Chalmers* doctrine beyond the perimeters of the situation there involved is to emasculate the provisions of Section 8(b)(1)(A). Such a result can hardly have been intended by the Supreme Court. It should not be reached here. In the interplay between the statutory policy to prevent coer-

¹⁴ *Scofield, et al. v. N.L.R.B.*, 394 U.S. 423.

¹⁵ *N.L.R.B. v. Marine & Shipbuilding Workers*, 391 U.S. 418.

cion of employees for exercising Section 7 rights on the one hand, and the policy to permit unions to guide their internal affairs and determine their membership qualifications on the other, the former must prevail where the membership relation which justifies the latter is terminated.

For the foregoing reasons, we find that the Respondent violated Section 8(a)(1)(A) of the Act by imposing disciplinary fines upon resigners from its ranks, for acts committed after their resignations. We shall order the Respondent to cease and desist from such conduct, including attempts to collect the illegal fines through court proceedings.

Also at issue in this case is the legality of the Respondent's imposition of disciplinary fines upon two other categories of strike-breaking employees, those who crossed the picket line without resigning from the union, and those whose resignations were submitted after the commencement of strikebreaking activities but prior to the initiation of disciplinary action against them. The legality of the imposition of discipline upon members for conduct engaged in during the period of membership is clear.¹⁸ Accordingly, we find that the Respondent did not violate Section 8(b)(1)(A) by fining the nonresignees. Nor, in our opinion, does the Respondent's failure to exercise its disciplinary authority with respect to the second group until after the submission of

¹⁸ *N.L.R.B. v. Allis-Chalmers Mfg. Co.*, *supra*. As a majority of the Board (Members Fanning, Brown, and Jenkins), would find that the legality of union fines does not depend on their reasonableness, the Board does not adopt the Trial Examiner's findings, conclusions and recommendations on that issue. See *Arrow Development Corp.*, 185 NLRB No. 22, issued this day. For the reasons stated in his dissenting opinion in the *Arrow* case, Chairman McCulloch would examine the amount of the fines to determine their reasonableness in those situations where the union's imposition thereof and threatened or actual court action to collect such fines would in all other respects be lawful. Where expulsion from membership is clearly the only available method of enforcement, he would consider the size of a fine irrelevant.

their resignations affect the legality of its action. As the source of the Union's disciplinary authority lies in the contractual relationship between the organization and its members, it is to the rules of contract law that we turn in evaluating the Union's conduct. The provisions of a contract are enforceable, and a cause of action can be brought upon them, even after the expiration or termination of the agreement. The rights and duties created by an agreement are extinguished only prospectively by the termination thereof. Thus the termination of some employees' membership here did not affect the Union's subsequent assertion of rights which had accrued to the Union during their earlier period of membership, such as the right to discipline the employees for prior strikebreaking. The effect of these employee's resignations was only to extinguish the Union's future authority over them.

Accordingly, we further find that the Respondent did not violate Section 8(b)(1)(A) of the Act by fining former members for misconduct engaged in prior to their resignations from among its ranks. However, this conclusion does not legitimize the imposition of discipline for conduct engaged in after the resignations. We shall order the Respondent to cease and desist from such action, and to remit a prorata portion of the fine, so that what remains reflects only preresignation conduct.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, Booster Lodge No. 405, International Association of Machinists and Aerospace Workers, AFL-CIO, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Restraining or coercing employees, who had resigned from and who were no longer members of the Union,

in the exercise of their rights guaranteed in Section 7 of the Act, by imposing fines against such employees because of their post-resignation conduct in working at the Michoud plant during the September 1965, strike, or by threatening to seek or seeking court enforcement of such fines.

(b) In any like or related manner, restraining, or coercing employees in the exercise of rights guaranteed by Section 7 of the Act.

2. Take the following affirmative action to effectuate the policies of the Act:

(a) Reimburse or refund to any employees, described in paragraph 1(a) of this Order, who have paid fines under the circumstances described in that paragraph, the amount of said fines imposed because of post-resignation conduct in working at the plant.

(b) Post at its office and meeting hall and at the Michoud, Louisiana plant of the Boeing Company, if the Company is willing, copies of the attached notice, marked "Appendix." Copies of said notice, on forms provided by the Regional Director for Region 15, shall, after being signed by an authorized representative, shall be posted at the aforementioned locations, in conspicuous places, including all places where notices to employees are customarily posted, and reasonable steps shall be taken to insure that said notices are not altered, defaced, or covered by other material.

(c) Notify said Regional Director, in writing, within 10 days from the date of this Order, what steps Respondent has taken to comply herewith.

"In the event this Order is enforced by a judgment of the United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted pursuant to a Judgment of the United States Court of Appeals enforcing an Order of the National Labor Relations Board."

IT IS FURTHER ORDERED that those portions of the complaints as to which no violation has been found be, and they hereby are, dismissed.

Dated, Washington, D. C., August 27, 1970.

JOHN H. FANNING,	Member
FRANK W. McCULLOCH,	Member
HOWARD JENKINS, JR.,	Member

(Seal)

NATIONAL LABOR RELATIONS BOARD

Member Brown, concurring in part and dissenting in part:

I join with my colleagues in dismissing the allegations of the complaint with respect to the imposition of discipline upon members for conduct engaged in during their period of membership. However, I would also dismiss the remaining allegations concerning the imposition of fines upon purported resigners from the Union.

My colleagues' disposition of this question is predicated upon the premise that an employee, faced with the threat of a union fine, "may well be impelled to forego his statutory right not to honor the Union's picket line rather than risk involvement in a lawsuit whose outcome he cannot predict." But this is what *Allis-Chalmers* was all about. There, a union fine, or the threat of it, expressly designed to force employees to "forego [their] statutory right not to honor the Union's picket line" was nevertheless held not to violate Section 8(b)(1)(A) even though such a fine was collectible, or collected, in court. The Supreme Court reasoned that 8(b)(1)(A) was not intended to apply to this kind of coercion. If, as is the case here, a Union does not violate 8(b)(1)(A) by imposing or threatening to impose a collectible fine, it is difficult to see how a presumably uncollectible fine can be violative of that Section. Even if, as the majority reasons, the employee concerned may not be sufficiently knowledgeable to evaluate the Union's fine

as "un-collectible," and thus feel completely free to cross the picket line with impunity, he is plainly no more coerced than the full-fledged member.

A further consideration, ignored by my colleagues, impels me to this view. Each of the employees involved here, and in all other situations of which I am aware, was a member of the Union in all senses of the word before the strike began. Thus the fealty owed by a member to his union in effect came into play when the strike was authorized and began, and a "resignation" at that point was already a disloyal action from the standpoint of the Union and his fellow members. Moreover, I cannot conceive of a case arising where a union would "fine" someone who had never been its member at all. It is only because the employees here were, in the eyes of the Union, and pursuant to the Union's constitution and bylaws, still Union members, that the fines would have any impact at all upon them. In this respect, whether employees are still members of the Union for purposes of imposition of a Union fine, the proviso to 8(b)(1)(A), in express terms, applies to a union's rules for acquisition or retention of membership.¹³

For all these reasons, I would find no violation of Section 8(b)(1)(A) of the Act in a Union's fining a nonmember or a purported nonmember.

Dated, Washington, D. C., August 27, 1970.

GERALD A. BROWN, Member
NATIONAL LABOR RELATIONS BOARD

¹³ The cases cited by my colleagues in footnote 11 concern a Union's application of its membership rules to his job tenure, and thus are inapposite to the instant situation, where the rules pertain solely to another internal union matter.

THE [illegible] OF [illegible]

BY [illegible]

[illegible]

[illegible]

[illegible]

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APPENDIX II

COLLECTIVE BARGAINING AND STRIKE PROVISIONS
OF
NATIONAL UNION CONSTITUTIONSINTRODUCTION

Herbert J. Lahne of the Department of Labor recently prepared a report analyzing collective bargaining provisions of national union constitutions.

Parts of the tabulations which he used in the development of his report have been condensed and combined into the attached lists which commissioners may find useful for reference. The first tabulation is of provisions relating to strike procedures; the second is of provisions relating to bargaining.

In his report Mr. Lahne makes it clear that this survey covers national constitutions only. District or local constitutions may include more. In addition he has pointed out that procedures have developed which supplement constitutional provisions, so that a degree of tradition fills in some of the gaps in these lists.

Sup. Court, U. S.
FILED

AUG 2 1972

MICHAEL HODAK, JR., CLERK

**In the
Supreme Court of the United States**

October Term, 1971

No. 71-711

**NATIONAL LABOR RELATIONS BOARD,
PETITIONER,**

v.

**GRANITE STATE JOINT BOARD,
TEXTILE WORKERS UNION OF AMERICA,
LOCAL 1029, AFL-CIO**

**ON WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT**

**BRIEF FOR THE GRANITE STATE JOINT BOARD,
TEXTILE WORKERS UNION OF AMERICA,
LOCAL 1029, AFL-CIO**

**HAROLD B. ROITMAN
11 Beacon Street
Boston, Massachusetts 02108
*Attorney for Granite State Joint
Board; Textile Workers Union of
America, Local 1029, AFL-CIO***

Of Counsel:

**DONALD J. SIEGEL
SEGAL, ROITMAN & COLEMAN
11 Beacon Street
Boston, Mass. 02108**

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**In the
Supreme Court of the United States**

October Term, 1971

No. 71-711

NATIONAL LABOR RELATIONS BOARD,

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v.

**GRANITE STATE JOINT BOARD,
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**ON WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT**

**BRIEF FOR THE GRANITE STATE JOINT BOARD,
TEXTILE WORKERS UNION OF AMERICA,
LOCAL 1029, AFL-CIO**

Opinions Below

**The National Labor Relations Board initiated this case
by its Complaint in Case No. 1-CB-1460(1-2) alleging that**

the Granite State Joint Board, Textile Workers Union of America, Local 1029, (hereinafter referred to as the Union) violated Section 8(b)(1)(A) of the Act by warning two individuals that they would be subject to fines for strike-breaking. This complaint was heard by Trial Examiner Milton Janus, who filed his decision on June 4, 1969, recommending that the complaint be dismissed (Pet. App. 20a).¹

Additional charges against the Union were filed in Cases Nos. 1-CB-1504(1-4) and 1-CB-1534. These two cases were consolidated, and the Board issued a new Complaint on the consolidated cases on October 20, 1969. Meanwhile, Case No. 1-CB-1460 was reopened and remanded by Order of the Board; it was consolidated with the other cases; and hearings were held before Trial Examiner Janus. He issued his second decision on April 8, 1970 (Pet. App. 37a). In that decision, he held that the fining of mid-strike resignees by the union and the attempted judicial enforcement of those fines violated section 8(b)(1)(A) of the National Labor Relations Act.

In the meantime, the Union had proceeded by writs of the Superior Court in the State of New Hampshire to bring suit against those individuals who had been fined for strike breaking in violation of the Union's rules and constitution. The writs were for collection of the fines and for reimbursement for monies advanced for the payment of insurance premiums for union members during the course of the strike (A103, Pet. App. 42a). These cases were consolidated, and a Motion to Dismiss filed by the defendants was denied after hearing by Charles J. Flynn, presiding Justice, in an opinion dated March 26, 1970. (That opinion is attached to this brief. These cases are now awaiting trial in New Hampshire Superior Court.)

¹ "Pet App." refers to the appendix to the petition for a writ of certiorari. "A" refers to the separate appendix to the briefs.

After denying the Union's request for oral argument, a three-member panel of the Board upheld the Trial Examiner's decision two to one, member Gerald Brown dissenting (Pet. App. 13a-19a). The Board filed an application for enforcement before the U.S. Court of Appeals for the First Circuit in Case No. 71-1063. The Court of Appeals denied the Board's petition for enforcement on June 29, 1971 (Pet. App. 1a-11a).*

The opinion of the Court of Appeals (Pet. App. 1a-11a) is reported at 446 F.2d 369. The decision and order of the National Labor Relations Board (Pet. App. 13a-19a) are reported at 187 NLRB No. 90.

Jurisdiction

The judgment of the Court of Appeals was entered on June 29, 1971 (Pet. App. 12a). The Solicitor General filed a Petition for a Writ of Certiorari on November 26, 1971. The writ was granted on March 20, 1972. The jurisdiction of this Court was invoked pursuant to 28 U.S.C. 1254(1).

Question Presented

Whether a member of a union, engaged in a lawful strike, may escape his obligation to refrain from strike-breaking by submitting a mid-strike resignation to his union and then engaging in strikebreaking?

Statutes Involved

Sections 7 and 8(b)(1)(A) of the National Labor Relations Act (61 Stat. 136, 73 Stat. 519, 29 U.S.C. 151 et seq.) are involved in this case. In relevant part, section 7 of the Act provides, "Employees shall have the right to self-organization, to form, join or assist labor organizations

* The decision has been noted in 85 Harvard L. Rev. 1669, 6 Suffolk Law Journal 257.

and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities . . ."

The pertinent parts of section 8(b)(1)(A) are as follows: "8(b) It shall be an unfair labor practice for a labor organization or its agents -- (1) to restrain or coerce (A) employees in the exercise of the rights guaranteed in section 7: Provided, That this paragraph shall not impair the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership therein; . . ."

Statement

The Granite State Joint Board, Textile Workers Union of America, Local 1029, AFL-CIO, was the collective bargaining representative of the employees of the International Paper Box Machine Company² for more than twenty years. There were approximately 160 employees in the collective bargaining unit. All but three or four of these workers voluntarily joined the Union (Pet. App. 22a).³

The Union and the Company were parties to a three-

² Hereinafter referred to as the Company.

³ Membership in the Union was voluntary. (A. 21) No one was required to become a member as a condition of employment. The expired collective bargaining agreement contained a maintenance of membership clause which provided that all employees who were Union members or who joined the Union were required to maintain membership in good standing as to payment of dues. (A. 30) There was also a checkoff clause under which the Company agreed to deduct Union dues from the weekly wages of an employee who authorized it in writing. (A. 30)

Employees who decided to join the Union signed a combined membership acceptance and dues deduction authorization card. The dues deduction authorization was automatically renewed for yearly periods unless revoked during a ten day period after the termination of the contract or end of the year. (A. 34) The check-off authorization form for dues was irrevocable except during the specified annual ten-day periods.

year collective bargaining agreement which expired on September 20, 1968 (Pet. App. 24a). Negotiations for a renewal Agreement were unsuccessful; and at a membership meeting, six days before the scheduled expiration of the 1965 Agreement, the union membership unanimously voted to strike if no agreement was reached by September 20, 1968 (Pet. App. 22a, A29). All thirty-one employees involved in this case attended the meeting and voted to strike.⁴ No new agreement was reached by the deadline and the economic strike commenced on September 20, 1968.⁵ A few days after the strike began, the union membership met and passed a resolution providing that anyone aiding or abetting the Company during the strike would be subject to a fine of up to \$2000.00 (Pet. App. 22a, A 18-19, 29).⁶

Soon after the start of the strike, the Company notified the Union that it was refusing to keep in effect the group life and health insurance coverage which had been provided under the 1965 collective bargaining agreement. As a part of its activity in support of the strike, the Union agreed to take over payment of the premiums necessary to keep the group policy in force (A 20-21). Each member signed an individual promise to repay the premiums paid in his behalf or notified the Union to discontinue his coverage (A 106). The Union also paid strike benefits to individuals who applied for them as well as distributing holiday turkeys. The charging parties participated in these activities (A 66, Pet. App. 41a).

⁴ See fn. 2 of the decision of the Court of Appeals, (Pet. App. 3a) and 446 F2nd at 370.

⁵ The plant remained open but the only employees at work were supervisors and the 3 or 4 members of the bargaining unit who were not union members. About 160 employees who were union members honored the strike vote and maintained a token picket line, (Pet. App. 22a).

⁶ The vote on the fine resolution was unanimous. See Trial Examiner's Decision of June 4, 1969, (Pet. App. 23a, A. 19, 29).

On November 5 and 25, 1968, while the strike was still in progress, two employees⁷ sent letters of resignation to the Union (Pet. App. 23a, A 89, 96). The Union refused to accept these mid-strike resignations and warned both employees of their liability to fines for strike-breaking (Pet. App. 23a, 24a, A 32-33, 35-36). Radziewicz returned to work secretly for a few days before Thanksgiving but stopped working after receiving a second warning about the fine (Pet. App. 24a, A 17). The two employees filed unfair labor practice charges against the Union and shortly thereafter the Board issued a complaint alleging that the threat of fines in these circumstances violated Section 8(b)(1)(A) (Pet. App. 20a-21a). After a hearing, the Trial Examiner found no violation.⁸

After this decision, the Company wrote to all striking employees and advised them that the Union could not discipline them for post-resignation strikebreaking (A 107). The Union President in a reply letter warned all members that the Union officers would uphold the unanimous fine resolution and that any strikebreaker was subject to discipline and a fine of up to \$2000 (Pet. App. 41a, A 79).

During the months that followed the Trial Examiner's June, 1969, decision, twenty-nine additional employees submitted mid-strike resignations and engaged in strikebreaking (Pet. App. 41a). Each of the thirty-one employees who returned to work was formally charged, duly notified, brought to trial and fined. Each strikebreaking individual received notice of his hearing, but all failed to attend and none paid the fine. The Union then commenced actions to collect the fines and other contract claims due and unpaid in the New Hampshire state courts (Pet. App. 41a-42a).

⁷ Felix Radziewicz and Maurice Kimball. Case 1-CB-1460-1-2.

⁸ See Trial Examiner's Decision in 1-CB-1460-1-2, Pet. App. 20a.

This Union action resulted in new charges. The Board then issued a second complaint. A second hearing was held and Trial Examiner Janus found a violation of Section 8(b)(1)(A) (see p. 3 supra). The Board ordered the Union to rescind the fines against the thirty-one strike-breakers and to cease its efforts to collect those fines in the New Hampshire state courts.⁹ However, the Board affirmed the Trial Examiner's ruling that the State court suits brought by the Union to obtain reimbursement for insurance premiums and possibly for strike benefits did not constitute an unfair labor practice (Pet. App. 47a).

The Court of Appeals for the First Circuit unanimously denied enforcement of the Board's order. The Court refused to interpret the 1947 amendment to Section 7¹⁰ to authorize mid-strike resignations. Its interpretation was based on the meaning of the term "refrain" and the legislative history of the amendment. Support for the decision was found in *N.L.R.B. v. Allis-Chalmers Manufacturing Co.*, 383 U.S. 175 (1967).

Summary of Argument

The decision in *Allis-Chalmers* established the right of a union to fine members who engage in strikebreaking. The Court of Appeals in the decision below rejected the contention of the National Labor Relations Board that by tendering a mid-strike resignation, a strikebreaker could avoid an established union penalty for violation of his union obligations. The decision of the Court of Appeals should be sustained on several grounds.

⁹ See Sup. Decisions of the NLRB and the Trial Examiner, Pet. App. 13a and 37a, respectively.

¹⁰ The Taft-Hartley amendments added the following phrase to Section 7, "to refrain from any or all such activities."

1. These strikebreakers entered into a contractual relationship with other union members. In this case the employees voluntarily entered into a contract of membership imposing upon them a duty of loyalty under the union constitution. The contract of membership was reinforced by a contract entered into with other members to go on strike. After the strike started all of the members voted as a matter of contract between themselves to fine anyone who engaged in strikebreaking. Consideration for these contract commitments is established by the reliance interest of each member in the promise and performance of every other member. The Union is entitled to enforce these contracts in the New Hampshire Courts.

2. The National Labor Policy entitles the Union to protect the right of the membership to engage in a lawful strike. The concerted action of the membership under Sec. 7 and 13 of the Act depends upon union solidarity. The Union is entitled to maintain discipline to protect the right to engage in concerted strike action. The members waived their Sec. 7 right to refrain from engaging in concerted action by joining in the strike and voting for the resolution to fine strikebreakers.

3. The National Policy supporting democratic union procedures reinforces the decision of the Court of Appeals. The policies of the National Labor Relations Act require support of the majority rule. In this case there was a unanimous vote to strike and a unanimous vote to fine strikebreaking activity. The Landrum-Griffin Act protects a member's right to internal democratic procedures and imposes a duty upon a member to exercise his democratic right to change the majority rather than to engage in individual strikebreaking.

4. The Union has a right as a matter of internal union policy under its constitution to determine the validity of an attempted resignation free from interference by the Board. The Board has been excluded from the regulation of internal union affairs by Congress. In this case the Board has improperly attempted to support employer intermeddling in union affairs contrary to the National Labor Policy by denying the Union the right to decide its own resignation policies and procedures and to enforce those policies by appropriate legal action in the state courts.

Argument

I. THE NATIONAL LABOR POLICY SUPPORTING CONCERTED ACTIVITY ENTITLES THE UNION TO ENFORCE THE CONTRACT OBLIGATIONS.

The proposition that a Union may fine members who engage in strikebreaking was settled by this Court's decision in *N.L.R.B. v. Allis-Chalmers Mfg. Co.*, 388 U.S. 175 (1967). There it was held that a union did not violate Section 8(b)(1)(A) by fining strikebreakers and enforcing the fines through judicial process. Under this decision, the action of this Union would have been upheld but for the purported resignations of these strikebreakers. The only real distinction between this case and *Allis-Chalmers* is that mid-strike resignations were submitted by these strikebreakers immediately before they engaged in strikebreaking. An examination of the rationale of *Allis-Chalmers* leads to the conclusion that the distinction relied upon by the Board is a meaningless one. At 388 U.S. 181, the Court stated,

Integral to this federal labor policy has been the power in the chosen union to protect against erosion its status under that policy through reasonable discipline of members who violate rules and regulations governing membership. That power is particularly vital when the members engage in strikes. The economic strike against the employer is the ultimate weapon in labor's arsenal for achieving agreement upon its terms, and *'the power to fine or expel strike-breakers is essential if the union is to be an effective bargaining agent'* (Emphasis added.)

The Court of Appeals quoted this language with approval (Pet. App. 8a) (446 F.2d at 372-3).

As Mr. Justice White pointed out in his concurring opinion: — "... The Court seems unanimous in upholding the rule against crossing picket lines during a strike and its enforceability by expulsion from membership." *Allis-Chalmers* 388 U.S. at 199.

The Board decision holding that a mid-strike resignation precludes union discipline of a strikebreaker subverts the holding and rationale of *Allis-Chalmers*. It would give each member an automatic absolution from the rule of *Allis-Chalmers* by simply stating, "I resign".

The Court of Appeals in the decision below refused to follow the Board's argument. It followed the Union position based upon the contract commitments made by each member. Essentially, there were three interlocking contract commitments made by these employees which the Union is seeking to enforce in the Courts of the State of New Hampshire.

The first contract is the contract of membership.

The Union is a voluntary unincorporated association. Membership is voluntary. Each of the individuals involved

in this case voluntarily joined the Union. There were no pressures of a union security clause exerted on these individuals to impel them to sign the contract for membership. These were mature men who exercised their freedom of choice to become part of the Union organization. Each individual who freely became a member of the organization assumed the membership obligations. As the Board phrased it in the *Boeing Case*, relied on for its decision in this case: "In joining a Union, the individual member becomes a party to a contract-constitution." *Booster Lodge 405 International Association of Machinists* (the Boeing Company) 185 NLRB No. 23, 75 LRRM 1004 (1970) enf'd in material part sub nom *Booster Lodge No. 405, I.A.M. AFL-CIO v. N.L.R.B.*, 79 LRRM 2443 (C.A.D.C. 1972).

Even if the contention is made that an individual can resign from a voluntary association at any time, a resignation from membership does not allow the individual to escape from the obligations which were incurred as a result of membership. This is a standard contract law. A person may enter into a contract or not as he sees fit. Having entered into a contract he may choose to withdraw or break the contract at any time, but such a withdrawal will not allow him to avoid the obligations of the contract. This is the essence of the Union's position in this case. It is an axiom of common law that such a contract is valid and enforceable.

Restatement of Contracts, Section 17 — Illustration 1 states: "A becomes a member of an unincorporated society and by so doing promises to pay dues to the society. He is bound by a contract."

Int'l. Assn. of Machinists v. Gonzalez, 356 U.S. 617 (1958)

N.L.R.B. v. Allis-Chalmers Mfg. Co., 388 U.S. at 182-3.

The second contract was the contract to strike, and this contract was reinforced by a third contract agreement to impose a fine on any member who aided the Company during the strike.

These individuals who voluntarily joined the organization agreed by unanimous vote to commit themselves and the Union to a strike. At that time the members recognized a special concern over the obligations which each member had to the other members in undertaking the strike. Accordingly, the members undertook to reinforce the Constitution and By-Laws with a Resolution which provided for the imposition of a fine of up to Two Thousand (\$2000) Dollars for any individual who undermined the concerted action commitment by aiding and abetting management. This was adopted unanimously as an exercise of their rights under the contract-constitution. Freedom to contract is one of the fundamental policies of the Act. Cf. *H. K. Porter, Inc. v. N.L.R.B.*, 397 U.S. 99 (1970).

The Labor Management Reporting and Disclosure Act (Landrum-Griffin), Section 101 (a) (2), 29 U.S.C. 411 (a) (2) expressly preserves to Unions "the right to adopt and enforce reasonable rules as to the responsibility of every member toward the organization as an institution and to his refraining from conduct that would interfere with its performance of its legal or contractual obligations." Pursuant to this right, the Union adopted the rule providing for the fining of disloyal members whose strikebreaking activities interfered with the mutual obligation of every member to remain loyal to his contract obligation to strike.

This case has developed into a test of the Union strike vote and resolution. On the assurance of the Company that they could break their union commitment with impunity, the charging parties broke their contract of membership and broke their commitment to carry on a strike by crossing

the picket line and returning to work. The Board seeks to insulate the charging parties from the consequences of these broken promises and violations of their Union obligations of loyalty, a policy the Court of Appeals expressly rejected.

At one time in the development of contract law, there was concern over the adequacy of consideration for a contract involving a voluntary commitment to an organization. For example, where a charitable or other organization solicited pledges of funds for construction or other common project, the voluntary act of subscribing to the fund was held enforceable as a contract since it established a commitment to concerted action under which other donors were induced to subscribe. Consideration stemmed from the concerted aspect of the enterprise, each donor induced every other donor to make a commitment in the common enterprise. The right to resign from such a voluntary commitment does not relieve a donor from his obligation.

American Law Institute Restatement of Contracts,
Section 90

Corbin Contracts, Sec. 198

Allegheny College v. National Bank, 246 N.Y. 369, 159
NE 173 (Cardoza) (1927)

Martin v. Meles, 179 Mass. 114, 60 NE 397 (Holmes)
(1901)

The same situation is inherent in the strike action of the Union. Each member is induced to engage in the strike because of the commitment of all of the other members to engage in the strike. It is, of course, only the concerted action which makes the strike possible.

In the decision below, the Court stated,

"We can imagine a case involving three hypothetical employees whom we shall call Jones, Smith and Parks. Initially, Jones is anxious to strike but Smith and Parks hesitate finally acquiescing on the condition that all agree to stick it out for the duration of the strike. We suggest that this kind of mutual reliance is implicit in all strike votes; many employees would hesitate to forego several weeks or months of pay if they knew their cohorts were free to cross the picket line at any time merely by resigning from the union. An alternative theory, also suggested by the subscription cases, is that the union can enforce an employee's agreement to strike since it has embarked on the strike in reliance on his promise to honor it." Pet. App. 6a, 7a, 446 F.2d at 372.

The reliance factor which makes contracts pledging future support enforceable is especially relevant to the pledge of support for a strike. The reliance factor and the need for discipline to support the common project becomes so overwhelming that commentators have likened it to treason.

"The constitution is the union's charter of government. It orders the relationship of the union and its members to preserve and promote organizational effectiveness. A prominent organizational need is the ability of the union to prosecute a strike. It is impossible to suppose, from the viewpoint of either the union as an institution or of any member as part of that institution, that the constitution allows desertion from the ranks in the midst of a strike. . . . [N]egotiations are carried on with the prospect of an immediate or possible break of diplomatic relations and a resort to force. If the break comes, the union goes

to war and the need for discipline is obvious. The employer is the enemy; giving him any aid or comfort is treason. To supply him with labor is to furnish him the weapon with which the battle is fought and is clear treason."

Summers, *Disciplinary Powers of Unions*, 3 Ind. & Lab., Rel. Rev. 483, 489. Summers, *Legal Limitation on Union Discipline*, 64 H.L.R., 1049 at 1059. Cox, *Law and National Labor Policy*, 110. *Burke v. Locomotive Engineers*, 286 F. 949 (D.Ct. Md. 1922)

Under this theory a worker who joins a strike is similar to a volunteer for military service or a seaman signing on for a voyage. He is under strict discipline for the duration. If or when he attempts to resign from his duties and obligations in mispassage he has committed a criminal act and is subject to summary discipline.

The duty of loyal support inherent in every contract of association finds its cardinal expression in the obligation to refrain from strikebreaking. Every member depends on every other to withhold his labor from the struck employer in order to make the strike effective. The least that each member is entitled to expect of the other is that all who are pledged to the common cause at the beginning of the struggle will fulfill their obligation to carry through for its duration. Accordingly, a mid-strike resignation from a union, however efficacious it may be to sever other membership obligations, should not as a matter of the fair interpretation of the relationship be given the effect of relieving the resignee of his duty to refrain from strike-breaking at the very moment when its observance counts most.

It is plain that the union constitution as the governing instrument cannot be reasonably interpreted to mean that a mid-strike resignation has the expected effect of author-

izing the defector to break the existing strike. On the contrary, "derived from implied covenants of good faith and fair dealings" which inhere in every contract, the least that membership in the Union contemplates is that the obligation to refrain from strikebreaking, undertaken before the strike and activated by it, shall endure for the duration of the strike.

In other situations not bolstered by the fundamental importance of the strike, the Board has applied a well established rule preventing the withdrawal of a member of a voluntary collective bargaining association. (The voluntary association might be made up of a group of employers or unions.) In these cases, once a party has joined or participated in an association bargaining group, no withdrawal is permitted except by mutual consent. A party that attempts to withdraw in the midstream of negotiations is held to have committed an unfair labor practice by the Board. Under established Board precedent, once negotiations start, a party that attempts to withdraw from the voluntary association is bound by the obligations incurred by the association both before and after withdrawal. *Thirty-First Annual Report of the National Labor Relations Board* at p. 89; *Thirty-Third Annual Report of the National Labor Relations Board* at p. 92. The Board does permit withdrawal prior to the start of negotiations by proper reasonable notification to the parties; but after negotiations have started, withdrawal is prohibited since it disrupts the reliance of the parties on the group action. *Retail Associates, Inc.*, 120 NLRB 388 (1958); *Sheridan Creations, Inc.*, 148 NLRB 1503 (1964), *en'd sub nom. N.L.R.B. v. Sheridan Creations, Inc.*, 357 F.2d 245 (2 Cir. 1966), *cert. den.* 385 U.S. 1005 (1967); *Evening News Assn.*, 154 NLRB 1494 (1965), *en'd sub nom. Newspaper Publishers Assn. v. N.L.R.B.*, 372 F.2d 569 (6 Cir. 1967); *N.L.R.B. v. Paskes*,

405 F.2d 120 (C.A. 2 1969).²¹ Courts have applied the same rule to business associations, *Martin v. Meles*, supra, p. 11; *Pacific Coast European Conference v. F.M.C.*, 439 F.2d 514 (C.A.D.C. 1970).

It is submitted that this is the correct application of Section 7 under prevailing contract law and the basic policies of the National Labor Relations Act. An employee has the option of engaging in concerted activities or refraining from engaging in concerted activities under Sec. 7. However, once an employee has elected to exercise his option by a commitment to engage in a concerted activity, he has entered into a contract. The contract is based on the reliance of others to his commitment. It prohibits his withdrawal until the concerted enterprise is completed or until there has been a mutual agreement of all concerned to terminate the concerted enterprise.

If the Board properly applied Sec. 7 and the proviso of Sec. 8(b)(1), it would have prevented the mid-term attempted resignations just as the Board prevents withdrawal in mid-negotiations to an association member. This fine was a reasonable disciplinary rule, voluntarily prescribed by unanimous vote for application to membership obligations during a voluntary strike which was also voted on unanimously. It was an action squarely within the proviso of Section 8(b)(1). The doctrine of *Allis Chalmers* and *Scofield*²² is in complete harmony with the construction of Sec. 7 of the Act spelled out above and adopted by the Court below. Resignations may be permitted to avoid con-

²¹ Chief Judge Aldrich of the Court of Appeals for the First Circuit makes this comparison in his opinion in *N.L.R.B. v. Field & Sons*, No. 71-1598 decided May 24, 1972.

²² *Scofield v. National Labor Relations Board*, 394 U.S. 423 (1969).

certed action by an individual who desires to escape, but the time to exercise the right is before the contract to engage in the concerted action is undertaken, not after there has been a change of position by others in reliance on the collective promises of all the members.

This rule limiting effectiveness to the future is in keeping with well established contract principles dealing with terminations of a contract relationship. For example, where an exclusive franchise is granted under a contract terminable at notice and the franchise holder invests in a distribution facility for the supplier's product the unseasonable termination of the franchise will give rise to an extension of the effective date of termination. *Clausen & Son v. The Hamm Brewing Co.*, 395 F.2d 388 (8 Cir. 1968). See also Gellhorn, *Limitations on Contract Termination Rights*, 1967, Duke L. J. 465. Liberty to quit employment is subject to the implied contract disability that in future employment the employee may not use confidential information to the disadvantage of the former employer. *Junker v. Plummer*, 320 Mass. 76, 67 NE2d 667 (1946). Am. Law Inst. Restatement of Agency 395, 396b. Partners may terminate a partnership at any time but not without being held to account not only for matters prior to his termination but also for damages arising from a premature dissolution. Similarly, the obligations of the marriage contract continue after a divorce.

II. THE NATIONAL POLICY SUPPORTING DEMOCRATIC UNION PROCEDURES REQUIRES SUPPORT OF THE UNION POSITION.

The National Labor Relations Act, 29 U.S.C. §151 *et seq.*, reinforced by the Labor Management Reporting and Disclosure Act, 29 U.S.C. §401 *et seq.*, is predicated on the democratic process. A majority vote binds the Union in establishing its collective bargaining rights under Sec. 9 of

the N.L.R.B. and in conducting its affairs after certification. Title I of the Labor Management Reporting and Disclosure Act insures democratic processes. The protected right of a member in voicing his position in union affairs and prevailing upon a majority for support carries with it the obligation to act within the organization rather than to engage in subversive actions.

The failure of these strikebreakers to bring their position to the attention of the Union membership is of critical importance in this aspect of National Policy. In the *Scofield* case, apparently relied on by the Board for its *dicta*,¹³ this Court recognized the obligation of a union member who declines to participate in a union-sponsored concerted activity to bring his position to the attention of the membership. At 394 U.S. 435, the Court said:

"If a member chooses not to engage in this concerted activity *and is unable to prevail on the other members to change the rule*, then he may leave the union and obtain whatever benefits in job advancement and extra pay may result from extra work, at the same time enjoying the protection from competition, the high piece rate, and the job security which compliance with the union rule by union members tends to promote." (Emphasis added.)

Had these strikebreakers taken that approach, the strike might have terminated before anyone engaged in strike-breaking. Sound democracy rather than subversion would have been supported. In *Vaca v. Sipes*, 386 U.S. 171 (1967) this Court pointed out that in order for the collective bargaining process to function properly, individual interests must be subordinated to the combined interests of all employees.

¹³ Brief for the National Labor Relations Board, p. 12.

The National labor policy which forms the underpinning of the decision in *Allis Chalmers*, puts special emphasis on the democratic concept of majority rule.

At 388 U.S. 180 the Court said,

"Congress has seen fit to clothe the bargaining representative with powers comparable to those possessed by a legislative body both to create and restrict the rights of those whom it represents... The employee may disagree with many of the Union decisions but is bound by them. 'The majority rule concept is today unquestionably at the center of our federal labor policy.' 'The complete satisfaction of all those who are represented is hardly to be expected.'"

Where a labor organization freely chosen by a majority of the employees takes collective bargaining action by majority vote, the Courts have enforced the majority rule against defecting individuals or minority counter actions. For example, individual contracts negotiated for private advantages over the collective bargaining agreement were held to be disruptive of industrial peace and a violation of the Act. *J. I. Case v. N.L.R.B.*, 321 U.S. 332 (1944). Similarly, minority group negotiations were held in violation of the Act in *Medo Photo Supply v. N.L.R.B.*, 321 U.S. 678 (1944), *Order of R. R. Telegraphers v. Railway Express*, 321 U.S. 342 (1944) reached a similar result with respect to the Railway Labor Act. Minority strikes to protest majority union decisions, have met the same result. *N.L.R.B. v. Sunbeam Lighting Co.*, 318 F.2d 661 (C.A. 7 1963); *Plaste-Line Inc. v. N.L.R.B.*, 378 F.2d 482 (C.A. 6 1960); *Harnischfeger Corp. v. N.L.R.B.*, 207 F.2d 575, (C.A. 7 1953); *Rocket Freight Lines v. N.L.R.B.*, 427 F.2d 202 (C.A. 10 1970). All these situations are parallel to the instant case where a minority group attempted to subvert the majority decision

to engage in a continued strike. The Board's decision in this case attempts to reverse established policy. The majority rule reinforced by the unanimous strike vote and the separate unanimous resolution of the membership to fine strikebreakers are casualties of the Board's ruling.

The decision of the Court of Appeals is based upon a waiver of Sec. 7 rights by those who engage in a strike until the termination of the strike. This is consistent with the majority rule democratic principle. A majority vote authorized the strike, and a majority vote of the membership could have terminated the strike.¹⁴ However, there is no evidence that any of the 31 charging parties ever attempted to convince their fellow union members to terminate the strike. There is no evidence to indicate that they ever attempted to influence a majority to support their position. The decision of the Board violates the democratic underpinning of the Act and the National Labor Policy.

III. THE NATIONAL LABOR POLICY WITH RESPECT TO THE STRIKE WEAPON IN COLLECTIVE BARGAINING REQUIRES THE DECISION BELOW TO BE SUSTAINED.

Allis Chalmers points out that the preservation of the right of a union to strike is fundamental to national labor policy. As the Court explained in *Allis Chalmers* at 388 U.S. 180,

"[N]ational labor policy has been built on the premise that by pooling their economic strength and acting through a labor organization freely chosen by the majority, the employees... have the most effective means of bargaining for improvements in wages, hours, and working conditions. The policy, therefore, extin-

¹⁴ See footnote 6 of the decision of the Court of Appeals, 446 F.2d 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 862, 863, 864, 865, 866, 867, 868, 869, 870, 871, 872, 873, 874, 875, 876, 877, 878, 879, 880, 881, 882, 883, 884, 885, 886, 887, 888, 889, 890, 891, 892, 893, 894, 895, 896, 897, 898, 899, 900, 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 920, 921, 922, 923, 924, 925, 926, 927, 928, 929, 930, 931, 932, 933, 934, 935, 936, 937, 938, 939, 940, 941, 942, 943, 944, 945, 946, 947, 948, 949, 950, 951, 952, 953, 954, 955, 956, 957, 958, 959, 960, 961, 962, 963, 964, 965, 966, 967, 968, 969, 970, 971, 972, 973, 974, 975, 976, 977, 978, 979, 980, 981, 982, 983, 984, 985, 986, 987, 988, 989, 990, 991, 992, 993, 994, 995, 996, 997, 998, 999, 1000.

guishes the individual employee's power to order his own relations with his employer and creates a power vested in the chosen representative to act in the interests of all employees."

If members can break a strike with impunity by tendering resignations before strike breaking, the employer is tempted to inter-meddle in union affairs and appeal to individuals over the Union rather than negotiate collectively on wages, hours and working conditions. *Universal Oil Products (Norplex Division) v. N.L.R.B.*, 445 F.2d 155 (C.A. 7 1971); *N.L.R.B. v. Borg Warner*, 356 U.S. 342 (1958). This is the background of the instant case where the Company by individual letters solicited strikebreakers by assuring them that a resignation would free them from their obligations. It also subverts the obligation to bargain collectively by promoting individual return-to-work bargains in derogation of Sec. 8(a)(5) and 8(e) of the Act. Cf. *N.L.R.B. Erie Resistor Co.*, 373 U.S. 221 (1963).

Congress has set national policy protecting the right to strike in many contexts, including specific policies against strikebreaking. The protection of the right to strike in Section 13 has continued through every revision of the Act. In setting the standards for unemployment insurance, Congress required a qualifying state to provide that workers could not be deprived of benefits for refusing to engage in strikebreaking. Social Security Act of 1935, Sec. E(1)(3), 49 Stat. 620, 42 U.S.C. 301. The Byrnes Act, 49 Stat. 1899, 18 U.S.C. 407, makes interstate transportation of strikebreakers a criminal offense. Many states have passed similar legislation. Note on *Anti-Strikebreaking Legislation*, 115 U. Pa. Law Rev. 190.

What the Board has done by its decision in this case (and in *Bosong*, supra, p. 9) is to undermine the national labor policy of protection of the strike weapon. The Board

decision encourages strikebreaking. As one commentator stated:—

“...I am of the view that the holding in *Boeing* is too much at variance with the spirit of *Allis-Chalmers* ... the strike should not be so easily undermined, at least to the extent that *Boeing* permits.” Gould, *Some Limitations Upon Union Discipline Under the National Labor Relations Act: The Radiations of Allis-Chalmers*, 1970, Duke L.J., 1105.

The Board evidently assumes that it can “invade or frustrate an overriding policy of labor law” by encouraging strikebreaking. It has no such authority under the N.L.R.A.¹⁵

IV. THE EFFECTIVENESS OF THE ATTEMPTED RESIGNATIONS WAS A MATTER FOR THE UNION—NOT THE BOARD—TO DETERMINE.

The proviso to sections 8(b)(1)(A) makes clear that a labor organization has the right to prescribe its own rules with respect to the acquisition or retention of membership.

In *N.L.R.B. v. Int. Union of United Automobile Workers* (Paulding case), 320 F.2d 12 (C.A. 1 1963), the Court of Appeals held that specific provisions in the Union Constitution were effective in preventing untimely resignations of members submitted during a strike from taking effect. In this case, the Union Constitution and By-Laws have no such express provisions. However, the uncontra-

¹⁵ The Board's reliance on *N.L.R.B. v. Industrial Union of Marine & Shipbuilding Workers*, 391 U.S. 418 (1968), is misplaced. There was no issue of strikebreaking in that case; rather, it involved the question of whether a union violated section 8(b)(1)(A) by disciplining a member who filed unfair labor practice charges against the union. In finding a violation of the Act, the Court noted that this question brought “other considerations of public policy into play.”

dicted testimony showed that by established practice the Union only honored resignations submitted during the "escape period" for the membership check-off of dues. (A. 24-25, 34). In fact, one of the charging parties, Hazen Johnson, submitted a previous resignation that was accepted and honored by the Union. (A. 60). The internal affairs of the Union, including the application of its own rules are the sole concern of the Union and its members not the concern of the Board. *Allis-Chalmers*, supra; *Universal Oil Products v. N.L.R.B.*, supra, p. 20.

The Board has recognized that the "unambiguous language of the proviso to Section 8(b) 1 (a) and the legislative scheme as a whole gave to the Unions the unimpeded right to prescribe the rules as to retention of membership. *International Typographical Union*, 86 NLRB 951, (1949) enforced sub nom. *N.L.R.B. v. I.T.U. et al.*, 193 F.2d 782 (7 Cir. 1951), affirmed 345 U.S. 100 (1953). The Board said:

"In our view, by including this proviso Congress unmistakably intended to, and did, remove the application of a Union's membership rules to its members from the prescriptions of Section 8(b)(1)(A), irrespective of any ulterior reasons motivating the Union's application of such rules or the direct effect thereof on particular employees." 86 NLRB at 957.

This language was reinforced by the Board in *Wisconsin Motors*, 145 NLRB 1097 (1964), upheld on appeal *Scofield v. N.L.R.B.*, supra. The Board defined the limitation on its powers as follows:

"But the Board has not been empowered by Congress to police a Union decision that a member is or is not in good standing or pass judgment on the penalties a Union may impose on a member..."

Footnote 3 in the *Scofield* case points out that discipli-

nary action in the enforcement of Union rules is a "federally unentered enclave."

In the *Wisconsin Motors* case, supra, the Board also pointed out that insofar as Congress was concerned with establishing a code governing the internal affairs of Unions, it placed jurisdiction not on the Board but in the Courts under the Landrum-Griffin Act — Labor Management Reporting and Disclosure Act of 1959 Title I. The provisions in Union Constitutions and By-Laws and the practices and procedures adopted by Unions with respect to their membership are outside the concern of the Board.

Congress recognized the present limitations on the power of the Board. Legislators who felt that the Board ought to have jurisdiction over strikebreaking fines introduced specific legislation to accomplish their purpose. For example, Senate Bill S1946-91st Congress, 1st Session would have made it an unfair labor practice for a labor organization to impose any fine or economic sanction against any person for exercising any rights under Section 7 of the N.L.R.B. This bill was not passed but until Congress enacts such legislation, it is clear that the Board cannot usurp Congressional authority to act in such matters.

This issue of the time when a resignation takes effect is one for the Union to determine under its rules.

North Jersey Guild Local 173 v. Rakos, 110 N.J., Sup. 77, 264 A.2d 453 (N.J. Sup. Ct. 1970)

The Court stated: "We find it unnecessary to determine whether the defendant's resignation took effect immediately or was subject to acceptance by the Local. We are satisfied that in either case he could not by submitting his resignation avoid discipline for his violation of the rules of the Local."

Walsh v. Communications Workers Local 2336, 259 Md. 608, 271 A.2d 148 (Md. Ct. of App. 1970).

The Board has upheld the trial and the fining of members who crossed a picket line and then tendered a resignation.

American Newspaper Guild, 186 NLRB No. 133 (1970).

The fact that there was no express provision of the Union constitution governing resignation does not preclude the application of the proviso to 8(b)(1)(A). Not all rules are written; the fact that a rule had evolved from past practice does not make it any less a rule.

The reasonableness of the rule is clear. First, it is important to note that the application for membership also included the dues checkoff authorization revocable only at specified times (Pet. App. 25a, A. 34). It was certainly reasonable for the Union to interpret the revocation procedures as applicable to the entire document and not just a part of it. Any other interpretation would allow a member to resign while his membership dues would continue to be deducted from his pay and remitted to the union, pursuant to the irrevocable check-off card.¹⁶

Second, the strike context of the resignation must be emphasized. The Union is under no obligation to aid the Company to undermine the Union by promoting strike-breaking resignations during the strike. These attempted resignations were not submitted by isolated individuals in good standing who attempted to leave a voluntary association. They were triggered by the Company intermeddling in the affairs of the Union. The recent decision of the Court of Appeals for the Seventh Circuit, *Universal Oil Products v. N.L.R.B.*, supra, is in point. The Court decided that insistence at the bargaining table that the union rescind its strikebreaking fines constituted an unfair labor practice by the Company.

¹⁶ Footnote 3 supra, p. 4.

As a matter of self-preservation, the Union was entitled to refuse to honor during the strike this action of members of submitting resignations and strikebreaking to destroy and undermine the Union. The outlawed yellow dog contract was an employer weapon of subverting Union action not far removed from this solicitation by the Company. Cf. *Hitchman Coal & Coke v. Mitchell*, 245 U.S. 229 (1917). *Norris - La Guardia Anti-Injunction Act*, Sec. 3, 29 U.S.C. 103. Certainly under these circumstances the Union was entitled to disregard the individual resignations as a free ticket for the disloyalty of strikebreaking regardless of their effectiveness for other purposes.

Conclusion

For the reasons stated above, the decision of the Court of Appeals should be affirmed.

Respectfully submitted,

HAROLD B. ROITMAN
*Attorney for Granite State Joint
Board, Textile Workers Union of
America, Local 1029, AFL-CIO*

Of Counsel:

DONALD J. SIGEL
SEGAL, ROITMAN & COLEMAN
11 Beacon Street
Boston, Mass. 02108

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IN THE
Supreme Court of the United States

PAK, JR., CLERK

OCTOBER TERM, 1972.

No. 71-7112

NATIONAL LABOR RELATIONS BOARD,
Petitioner,
vs.

**ANITE STATE JOINT BOARD, TEXTILE WORK-
ERS UNION OF AMERICA, LOCAL 1029, AFL-CIO.**

**WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE FIRST CIRCUIT.**

**IEF AMICUS CURIAE ON BEHALF OF THE CHAM-
BER OF COMMERCE OF THE UNITED
STATES OF AMERICA.**

MILTON SMITH,
General Counsel,

O. F. WENZLER,
Labor Relations Counsel,
Chamber of Commerce of the
United States of America,
1615 H. Street, N. W.,
Washington, D. C.,

JERRY KRONENBERG,
BOBOVSKY, EHRLICH & KRONENBERG,
120 South LaSalle Street,
Chicago, Illinois 60603,

GERARD C. SMETANA,
925 South Homan Avenue,
Chicago, Illinois 60607,

Attorneys for the Amicus Curiae.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1972.

No. 71-7111.

NATIONAL LABOR RELATIONS BOARD,

Petitioner,

vs.

**GRANITE STATE JOINT BOARD, TEXTILE WORK-
ERS UNION OF AMERICA, LOCAL 1029, AFL-CIO.**

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE FIRST CIRCUIT.

**BRIEF AMICUS CURIAE ON BEHALF OF THE CHAM-
BER OF COMMERCE OF THE UNITED
STATES OF AMERICA.**

INTEREST OF THE AMICUS CURIAE.¹

The Chamber of Commerce of the United States is a federation consisting of a membership of over thirty-seven hundred (3700) state and local chambers of commerce and professional and trade associations, a direct business membership in excess of thirty-eight thousand (38,000), and an underlying membership of approximately five million (5,000,000) business firms and individuals. It is the largest

1. This Brief is filed with the express written consent of all parties, pursuant to the Rules of this Court.

association of business and professional organizations in the United States.

The Chamber has appeared as *amicus curiae* in this Court in a wide range of labor relations matters which have substantially affected the legitimate and vital interests of its members. Examples of such cases in which the Chamber has participated include *N. L. R. B. v. Pittsburgh Plate Glass Co.*, _____ U. S. _____, 30 L. Ed. 2d 341 (1971); *Boy's Markets v. Retail Clerks Union*, 398 U. S. 235 (1970); *N. L. R. B. v. Burns International Security Services, Inc.*, _____ U. S. _____, 80 LRRM 2225 (1972); *H. K. Porter Co. v. N. L. R. B.*, 397 U. S. 99 (1970).

The issue presented here,—whether a union violates the National Labor Relations Act by fining employees who resigned from union membership during a strike and thereafter returned to work,—is particularly important to the Chamber's members, many of which are engaged in commerce and are subject, together with their employees, to the provisions of the National Labor Relations Act. The extent to which unions can discipline—and enforce such discipline against—their members affects employers' ability to be free of the enormously destructive consequences of strikes; it affects their employees' right to refrain from engaging in union activity, pursuant to the right guaranteed them in Section 7 of the Act; it involves the basic question to all parties governed by that Act as to where the balance should be struck between an individual's freedom of choice, a union's interest in solidarity and a united front, and an employer's need to be free of the jeopardy of coerced strike conduct.

The practical importance of these matters to the Chamber's members as well as to all other parties and their conceptual importance in the enforcement of Congress' legislative design impels the Chamber respectfully to submit its views to the Court.

SUMMARY OF ARGUMENT.

A. Congress' purpose in enacting Section 8(b)(1)(A) of the Act and amending Section 7 to guarantee employees "the right to refrain from any or all [union] activities" was expressly to prevent unions from coercing employees to engage in strike conduct against their will. In permitting unions to expel from membership those persons who, as by refusing to strike, fail to abide by the unions' internal requirements, Congress effected a balance between employees' freedom from coercion to strike and unions' need for a means to secure solidarity in the use of their strike weapon. Any further limitation of employees' right not to strike contravenes Congress' intent. This Court's decision in *N. L. R. B. v. Allis-Chalmers Mfg. Co.*, 388 U. S. 175 (1967), permitting unions to impose judicially enforceable fines on its members, adversely affected the legislative balance of rights created by the Act. Any further imbalance would, in effect, constitute a judicial repeal of the guarantees contained in Section 7 of the Act.

B. Granting unions the right to fine non-members for refusing to strike would not only create such an imbalance, but would adversely affect Congress' intent to promote free collective bargaining in which "... the results of the contest [are left] to the bargaining strengths of the parties." *H. K. Porter Co. v. N. L. R. B.*, 397 U. S. 99, 108 (1970). Inherent in this concept is the premise that the nature of the harm which a strike,—a statutorily-sanctioned form of economic warfare,—imposes on the parties should affect their bargaining posture and the ultimate terms upon which they resolve their dispute. To permit unions to fine non-members, thus in effect preventing them from responding to the economic pressures which their strike set in motion, constitutes an artificial restraint on the process of collective bargaining.

C. In order to satisfy their legitimate needs, unions do not require the authority to discipline those who elect not to remain union members. Absent such an extension of traditional union powers, the substantial weapons which unions already possess to expel and fine their members are more than adequate to encourage solidarity and obedience to the majority's will. To permit unions the further power to fine non-members would afford them not merely an effective strike weapon, but the means by which to compel the success of their strike objectives. Neither the terms of the statute, its legislative history nor sound policy warrant or permit such a result.

D. Reliance on such concepts as waiver and estoppel as an analytical device for determining strikers' statutory rights is inappropriate. Such concepts presuppose conduct knowingly and voluntarily undertaken. However, the act of joining a union, as well as the duties and obligations imposed by the union's by-laws and constitutions, are not voluntarily done or assumed in any realistic sense; an employee desiring to have a voice in the collective bargaining process in which a union is the employees' exclusive agent has no option but to join, the terms on which the employee joins are not subject to negotiation, and the employee has no election as to which and how many by-law obligations he shall assume. Moreover, it is realistically unwarranted to presume either that any striker intends a strike vote to represent an unqualified intention to strike for an unlimited time, or that any other striker relies on another's strike vote as constituting such an unqualified commitment.

ARGUMENT.

Within the last several years, this Court has on three occasions elected to hear and decide cases involving the conflict between a union's attempts to impose discipline upon employees and those employees' statutory right to be free of the coercion inherent in such discipline. In *N. L. R. B. v. Allis-Chalmers Mfg. Co.*, 388 U. S. 175 (1967), the Court upheld a union's right to fine and judicially enforce that fine against its members who returned to work during an authorized strike; in *N. L. R. B. v. Industrial Union of Marine and Shipbuilding Workers*, 391 U. S. 418 (1968), the Court held to be violative of Section 8(b)(1)(A) of the Act a union's action in expelling from membership and fining various of its members who had filed unfair labor practice charges against the union; and in *Scofield v. N. L. R. B.*, 394 U. S. 423 (1969), the Court approved a union's effort to enforce member-employees' adherence to union imposed production and pay ceilings by fining those who violated the union's standards and seeking judicial enforcement of the fines.

Each of these cases involved a union's imposition of fines against its members and required a balancing of the unions' interests in institutioned solidarity with their member-employees' right, guaranteed them in Section 7 of the Act, to take action disapproved by the union.

The instant case, being the fourth in the series and the third spawned by this Court's sharply divided decision in *Allis-Chalmers*, goes far beyond the others in that the union sought here to impose its discipline not upon its members but upon those who, disapproving the union's conduct and objectives, resigned their membership during an authorized strike and thereafter returned to work. In approving the imposition and enforcement of the union's fines in this case,

the court below has essentially emasculated the content of Section 7 as applied to such dissenting employees; that result so restructures the balance between collective interest and individual freedom as virtually to accord recognition only to the former. In doing so, the court misconceived the will of Congress, the content and design of the statute, the legitimate practical needs of unions, and the nature of the duty which union members owe their fellows.

A.

The Union's Effort to Discipline Non-Members, Following Their Resignation from the Union, Violated the Act.

1. Congress Intended to Afford Employees Maximum Protection from Coercion to Engage Involuntarily in Strike Activity.

Section 7 of the Act, which provides that "employees shall have the right to self-organization, to form, join or assist labor organizations . . . and shall also have the right to refrain from any or all of such activities", was enacted, among other reasons, so that employees would not be compelled to engage in strikes. According to Senator Taft, surely the preeminent authority on the content of the statute, the inclusion in the 1947 amendments to the Act of the language "and shall also have the right to refrain from any or all of such activities" was an attempt by the Conference Committee to

"... make the prohibition contained in Section 8(b)(1) apply to coercive acts of unions against employees who did not wish to join or did not care to participate in a strike or picket line."²

In the debates concerning Section 8(b)(1)(A) itself, which prohibits unions from restraining or coercing employees in the exercise of rights guaranteed in Section 7,

2. 93 Cong. Rec. 6859, II Legislative History of the Labor Management Relations Act of 1947, 1623 (hereafter Leg. Hist.).

Senator Taft explicated the effect of that Section in response to the objections of those who feared 8(b)(1)(A) would impair the effectiveness of strikes:

"I can see nothing in the pending measure which . . . would outlaw strikes . . . It would not outlaw anybody striking who wanted to strike . . . All it would do would be to outlaw such restraint and coercion as would prevent people from going to work, if they wished to go to work".³

Accordingly, the Congressional concern to free employees from coercion which would force them to engage in involuntary strike activity was sufficiently pronounced that it found expression both in the employees' bill-of-rights (Section 7) as well as in the Section prohibiting unions from infringing on those rights (Section 8(b)(1)(A)). In general, the context which framed these debates emphasized individual worker's need for the right to make individual choices concerning the scope and kind of union activities in which they would—or would not—engage, and a concomitant freedom from union coercion to act contrary to their beliefs and preferences.⁴ While the matter of disciplinary fines imposed by unions does not appear to have been mentioned in any of the legislative debates, no party has, or could reasonably have, disagreed that "a fine is by nature coercive".⁵

3. 93 Cong. Rec. 4436, II Leg. Hist. 1207.

4. Senator Taft's discussion of the purpose for enacting Section 8(b)(1)(A) included references to employees' right to be free of coercion from their unions which forced them to engage in undesired union activities. For example:

"If there is anything clear in the development of labor union history in the past ten years, it is that more and more labor union employees have come to be subject to the orders of labor union leaders. The bill provides for the right of protest against arbitrary powers which have been exercised by some of the labor union leaders." (93 Cong. Rec. 4023, II Leg. Hist. 1028.)

5. *Local 138, Operating Engineers*, 148 NLRB 679, 682.

Taking these elements of legislative history, together with the express terms of the statute, it follows that there existed a Congressional intention to grant employees maximum freedom, otherwise consistent with the statute, to refuse to engage in strike activity and to make this right (codified in Section 7) effective by prohibiting unions from exerting such forms of coercion upon those employees as would make that right meaningless. Congress did create an exception to this grant of right in the proviso to Section 8(b)(1)(A) by permitting unions to expel from membership such employees whose conduct is deemed by the union to warrant such a penalty. It is at least arguable from the legislative history as well as the specific statutory language that, by conferring upon unions the unqualified right to control the matter of their membership, Congress thereby sought to effect a balance between an employee's right to refrain from strike activity and a union's competing interest in enforcing strike solidarity through effective membership discipline.

In its *Allis-Chalmers* decision, however, this Court, without denying the existence of the described legislative desire to protect employees from coerced strike activity, found the existence of a parallel legislative purpose to permit unions the right to control their "internal" affairs, including "internal" discipline, exempt from the prohibitions against "restraint" and "coercion" in Section 8(b)(1)(A) and the guarantees of Section 7.

In resolving these conflicting claims of right, the divided *Allis-Chalmers* Court gave no effect to that legislative history, *supra*, which supports the view that Congress sought to insulate employees from union coercion (other than in the form of statutory-sanctioned expulsion) to engage in strike activity. Nor did the Court's view that the union's right to expel from membership subsumes the right to impose judicially enforceable fines gives effect to the express

terms of Section 7 entitling employees to refrain from union activity; an employee who faces the jeopardy of an enforceable union fine for refusing to strike does not receive the benefit, which Senator Taft described would accrue from the combination of the enactment of Section 8(b)(1)(A) and the amendment to Section 7:

"... to outlaw such restraint and coercion as would prevent people from going to work, if they wished to work."⁶

The principal point of this discussion is to suggest to the Court that even the *Allis-Chalmers* decision, in fixing the balance between an individual's freedom to resist engaging in strike activity and a union's competing interest in promoting a disciplined solidarity during a strike, has already gone farther in limiting the individual's freedom than the statute and its legislative history may be interpreted to have intended.⁷ Whereas, in *Allis-Chalmers*, the union's coercion was confined to its members, in the instant case a union has attempted to extend even further its right to coerce, via fines, involuntary adherence to a strike.

6. Cong. Rec. 4436, II Leg. Hist. 1207.

7. The decision in *Allis-Chalmers*, moreover, has given rise to a series of problems, such as the instant question as to whether unions may fine non-members; whether membership is "full" or "partial" or voluntary; whether members voted to strike or merely failed to oppose a strike or whether their votes reflected their personal intentions—and the ramifications of differing answers to these questions; whether membership may be terminated at will or may be limited by by-laws whose provisions no individual member can affect; whether fines are reasonable and the criteria which are appropriate to that judgment;—which can only result in substantial and continuing litigation and will necessarily deprive the parties of any confidence as to their rights in any given factual context. In order to avoid the legal quagmire which *Allis-Chalmers* has spanned and for all the other reasons stated herein, it is suggested that the Court should reconsider and reverse that holding.

The result sought in the instant case and the arguments stated in support have merit independent of any such reconsideration of *Allis-Chalmers*.

Even assuming the Court's continuing adherence to *Allis-Chalmers*, the Court should give effect here to the plain meaning of Section 7 and the legislative will it expresses. To permit unions to extend to non-members the coercion of judicially enforceable disciplinary fines would achieve a judicial repeal of Section 7 with respect to unionized employees.⁸

2. Union Discipline of Non-Members Is Inconsistent with the Intent of Congress and Decisions of This Court.

In *Scofield v. N. L. R. B.*, *supra*, this Court held that Section 8(b)(1)(A) does not reach a union's effort to enforce, through expulsion or in the courts, a properly adopted rule reflecting a legitimate union interest, which impairs no policy which Congress has inbedded in the labor laws, and which is reasonably enforced against "union members who are free to leave the union and escape the rule."⁹

Although *Scofield* did not involve a comparable conflict between statutory protections as was presented in *Allis-Chalmers*, a similar need to balance individual and institutional freedoms was required. With respect to the issue

8. The preeminent place of Section 7 in the entire statutory scheme has recently been recognized by this Court in *N. L. R. B. v. Nash-Finch Co.*, 404 U. S. 138 (1971), in which the Board was empowered to enjoin actions by the States which impinge upon rights granted in the Act.

9. *Scofield*, which involved a union's rule establishing production and pay ceilings, did not present a situation in which the union's discipline affected rights specifically granted employees in the labor laws. *Scofield* thus differed from both *Allis-Chalmers*, where the union's discipline collided with the express right to refrain from union activities conferred in Section 7 of the Act, and *Shipbuilding Workers*, in which the union's discipline inhibited employees' access to the N. L. R. B. as guaranteed in Section 10 of the Act. Despite this conceptional similarity between *Allis-Chalmers* and *Shipbuilding Workers*, this Court reached differing conclusions with respect to the propriety of the union discipline involved in the two cases as a result of the differences in the "legitimacy" of the union's objectives which gave rise to the curtailment of Section 7 rights which each case involved.

presented in the instant case,—a union's right to fine non-members,—the nature of the compromise reached in *Scofield* is relevant. For the Court in *Scofield* conditioned a union's right to impose discipline upon a concurrent right of employees to escape such discipline by relinquishing their union membership. This compromise, far from being inadvertent or incidental, is restated so frequently in the Court's decisions as to constitute a definitive statement of the Court's view:

"A union's rule . . . was therefore enforceable against *voluntary union members* by expulsion of a reasonable fine."¹⁰

"But as a union member, *so long as he chooses to remain one*, he is subject to union discipline."¹¹

"... Section 8(b)(1) leaves a union free to enforce a properly adopted rule which . . . is reasonably enforced against *union members who are free to leave the union and escape the rule*."¹²

"The individual member may express his interest within the union councils in determining what the group position shall be . . . or through exercising the option of *withdrawing from the union*."¹³

"If *members* are prevented from taking advantage of their contractual rights bargained for all employees it is because *they have chosen to become and remain union members*."¹⁴

"If a member chooses not to engage in this concerted activity and is unable to prevail on the other members to change the rule, *then he may leave the union and [also] obtain whatever benefits . . . compliance with the union rule by union members tends to promote*."¹⁵

10. 70 LRRM 3107.

11. 70 LRRM 3107, footnote No. 5.

12. 70 LRRM 3108.

13. 70 LRRM 3108, footnote No. 10.

14. 70 LRRM 3109.

15. 70 LRRM 3109-10. For purposes of the present proceeding, it is appropriate to emphasize the Court's express conclusion that

"That the *choice to remain a member* results in differences between union members and other employees raises no serious issue under Section 8(b)(2) and Section 8(a)(3) of the Act . . ." ¹⁶

The conclusion expressed in *Scofield*,—that union discipline cannot reach an employee who resigns from membership before committing the act for which the union would seek to fine him,—¹⁷ is in accord with such legislative history as relates to this issue. In fact, the question was not a source of great legislative attention. However, Congress' view as to the limits of unions' disciplinary rights, or, more narrowly, the extent to which unions' disciplinary acts are free of the reach of Section 8(b)(1)(A), is revealed in a confrontation between Senator Taft, a sponsor of the legislation, and Senator Pepper, a leading opponent. According to Senator Pepper, the thrust of the legitimate criticism of 8(b)(1)(A) in his view was that:

" . . . we do not have to intervene, by means of this legislation, into this internal affair of a union and deny it the right to protect itself against a man *in the union* who betrays the objectives of the union, who violates, perhaps, the constitution of the union or the by-laws of the union, and is convicted by his peers and fellow members of having an antiunion and antisocial attitude toward the workers in that organization." ¹⁸ (Emphasis added).

In responding, Senator Taft explained:

"The pending measure does not propose any limita-

while a union member may, following his leaving the union, continue to enjoy the benefits which the union has and will secure, that fact does not act as a bar to his right to resign from the union without jeopardy. In this regard, the Court, in balancing the parties' opposing claims, has given effect to the individual's right to act pursuant to his conscience and self-interest in the exercise of his Section 7 guarantee.

16. 70 LRRM 3110.

17. It follows that if an employee shall have the right to escape union discipline by resigning from the union, then his right to resign may not be restricted by the union.

18. 93 Cong. Rec. 4193, II Leg. Hist. 1097.

tion with respect to the internal affairs of unions. They still will be able to fire any *members* they wish to fire, and they still will be able to try any of their *members*."¹⁹ (Emphasis added).

Thus, the opposition to the enactment of 8(b)(1)(A) was premised on the need to exempt from the statute's coverage a union's right to discipline its *members* and the agreement of Senator Taft was secured that this right to discipline "members" was not affected by the legislation.²⁰ It is fair to conclude that had Congress intended unions' right to impose discipline to extend not merely to union members but to former members, that desire or intent would have surfaced at some point during the Congressional debates. Moreover, to interpret the existence of such an intent in the face of Congressional silence constitutes a far heavier burden on the legislative debates than the interpretation in *Allis-Chalmers* that Congress, despite its silence, intended to permit fines as discipline when the debates made reference only to expulsion. The imposition of fines upon those who might also, or alternatively, be expelled does not increase the range of persons who were subject to union discipline. Whatever dispute might have existed over the form of discipline which Congress sanctioned, the class of persons who would be affected in any event would be the same, all union "members". While *Allis-Chalmers* converted Congressional silence into acquiescence to what the Court said might be a lesser discipline than Congress expressly permitted, and for the same affected group, the union's object in the instant case is to convert Congressional silence into acquiescence that union discipline may be imposed upon an entire group of persons, non-union members,

19. Ibid.

20. The discipline to which the debates referred was limited exclusively to expulsion from membership. Assuming that Congress intended, without saying so, to include fines as permissible discipline, such fines would, pursuant to the described debates, similarly apply only to "members".

whose discipline by unions Congress did not expressly or impliedly sanction in any form. That is too heavy a burden for the logic or content of the legislative history to support.²¹

Ultimately, the language of *Scofield* which has been quoted here, as well as the interpretation of legislative history which has been urged, derives justification from the content of Section 7 and the Congressional will which that Section expresses to free unconsenting employees from the coercion to engage in strike activity. Whatever interpretation may be accorded to one or another Senatorial pronouncement, the resolution of the question presented here should give maximum effect to the spirit and the terms of Section 7. The holding of the court below failed to do so and essentially repealed the protection contained in that Section whenever a union authorizes a strike. Thus, where a bargaining unit is represented by a union, an employee cannot influence the many decisions which affect his employment rights and duties without joining the union. While a member, if he approves (or perhaps only fails to oppose) a strike, he is bound, according to *Allis-Chalmers*, to continue striking until the union permits him to cease, under threat of expulsion and fine. If he seeks to resign his membership in order to work, then, according to the

21. Further support for the view that Congress intended to restrict union discipline solely to union members derives from the enactment of the Labor-Management Reporting and Disclosure Act of 1959 (73 Stat. 519, 29 U. S. C. Sec. 101(a)(2), (5)). That statute was intended, unlike Taft-Hartley, to regulate unions' internal affairs and recognized unions' right to discipline by fining, suspension, expulsion, "or otherwise", but restricted such discipline to *union members* (Section 101(a)(5)). Similarly, it recognized the right of unions to prescribe reasonable rules whose violation might give rise to discipline, but expressly restricted such rules to those relating to the responsibility of *union members* (Section 101(a)(2)). Congress could hardly have intended to sanction union discipline against non-members by excluding such discipline from the coverage of Section 8(b)(1)(A) of Taft-Hartley, when it failed to articulate such an intention in a subsequent statute expressly intended to govern internal union affairs.

court below, he may similarly be fined and expelled. Only if he fails to join the union in the first instance, thus renouncing the exercise of any influence over his employment destiny, may he enjoy the statutory rights which Congress sought to confer in Section 7.

The Court is urged to reject so total an evisceration of the legislative protection sought to be expressed in that Section.

B.

The Extension of Unions' Disciplinary Power to Non-Members Is Contrary to Congress' Intent and Sound Policy.

To grant unions the right to discipline non-members would violate the Federal scheme whereby the result of economic warfare between the parties should depend upon the will of the parties to continue the conflict. The logic of a strike involves a test of the combatants' resolve to withstand the harm to which such economic warfare necessarily and intentionally subjects the parties; the employer's loss of present and anticipated income is contrasted with employees' loss of salary and fear of replacement. It is at least arguable (and a basis for its reversal) that *Allis-Chalmers* has already effected an unwarranted dislocation of this play of economic forces in compelling union members, through fear of fine as well as expulsion, to continue a strike beyond their desire and ability to withstand its consequences. To permit unions to exercise the same control over those who renounced their membership in order to avoid the continuing harm imposed by this statutorily-recognized form of warfare constitutes clear intervention on one side of the dispute.

The bargaining equality in which Congress sought to leave the parties to a labor dispute has been recognized

by this Court which has held that "... the results of the contest [are left] to the bargaining strengths of the parties". *H. K. Porter Co. v. N. L. R. B.*, 397 U. S. 99, 108 (1970). And accordingly to Senator Taft:

"Our aim should be to get back to the point where, when an employer meets with his employees, they have substantially equal bargaining power, so that neither side feels he can make an unreasonable demand and get away with it." (I Leg. Hist. 1007).

The effect of the decision of the court below granting to unions the right to fine non-members is to promote situations in which unions can make and secure such demands, since it practically prevents the affected employees from ceasing their strike activity, no matter the economic consequences which their strike produced. The result of the court's holding is not merely to permit unions such disciplinary power as to render their strikes effective, but to grant the power virtually to guarantee their success.²²

That result, apart from its inherent inequity, frustrates the purpose of the Act in that it interferes with the free play of economic forces. It inhibits collective bargaining by placing a restraint on the ability of adverse economic consequences to produce a settlement.²³

22. There is now pending in this Court another case which presents a situation in which a lower court has sanctioned an imbalance in the parties' bargaining power by aiding one of the parties in a labor dispute. *United States Chamber of Commerce v. Robert Francis, et al.*, No. 71-1554, on appeal from the United States District Court for the District of Maryland, presents the question whether payment by States of welfare benefits to striking employees contravenes Federal labor policy by subsidizing one party to a labor dispute, the striking union, thus deviating from the Congressional requirement of neutrality in private collective bargaining.

The same basic policy of leaving the parties to the consequences of voluntarily undertaken economic warfare is involved in both cases.

23. In this very case the play of economic forces led a number of employees to return to work, a factor whose impact on the

"Collective bargaining works because the parties know that if they didn't move towards an agreement they will get hurt. A strike to be effective must hurt both sides. It is the strike and fear of a strike that causes compromise and agreements . . ."²⁴

According to this Court's decision in *H. K. Porter*, collective bargaining is a system of economic tension based on the parties' respective strength. Artificial supports to one side or the other,—as by governmental subsidies to management, welfare payments to strikers, or the fines involved here, produce results which are unrelated to the parties' strength, their will or resolve, and are thus inconsistent with the legislative design.

C.

Unions Already Possess Adequate Disciplinary Authority in Order to Fulfill Their Legitimate Objectives Without Need for the Extension Sought Here.

Neither the advancement nor protection of unions' legitimate interests requires granting to unions the right to fine non-members for refusing to continue previously undertaken strike activity. Since the granting of such a right to unions necessarily trenches upon the employees' own Section 7 rights, the absence of such a need should preclude the granting of the requested disciplinary power exempt from the reach of Section 8(b)(1)(A).

ultimate terms on which the parties would resolve their dispute was both natural and consistent with the idea that the effect of the strike's harm—on one party or the other—should affect their bargaining posture. The communicated threat of fines, which surely inhibited other employees in this case from resigning union membership and returning to work created an artificial bargaining posture inconsistent with free collective bargaining.

²⁴ Affidavit of Dr. Herbert Northrup, Director of the Industrial Research Unit of the Wharton School of Finance and Commerce, p. 41 (presented to the court in *Francis, et al., v. Davidson, et al.* (unreported, D. Md., 1972), and referred to in the pending Jurisdictional Statement in this Court in *U. S. Chamber of Commerce v. Francis, et al.* (No. 71-1554).

The substantial weapons which unions already possess are more than adequate to encourage solidarity and obedience to majority will. As was noted before, where a union has been selected, that union is charged with the responsibility and power to order the employee's entire employment experience. The benefits he receives, the nature of the work he performs, the rules he must obey, the amount of the dues he pays, the decision whether to strike,—are among the decisions made by unions which employees cannot affect absent an opportunity to participate in the unions' deliberations. Expulsion, since it deprives an employee of any manner by which effectively to control his own employment destiny, is therefore an enormously potent weapon possessed by all unions. This conclusion applies not only to strong unions but as well to the "weak" unions about which the Court expressed concern in *Allis-Chalmers*, since even weak unions are charged with the duty to determine economic goals and negotiate working rules for the bargaining unit. Further, expulsion by a union carries with it certain social consequences for the expelled employee whose effect, both on him and his family, can be severe.

In addition to the forfeiture of any role in promoting his own welfare and the effects of social ostracism, an expelled employee would have reason to fear that the union would not protect or enforce his contractual rights in any work dispute which would otherwise entitle him to representation in grievance-arbitration procedures. Even should the union agree to act at all, the employee could hardly expect the most effective or zealous representation. Indeed, to many employees, the interests of management may appear to conflict with their own; in such situations employees will surely be reluctant to commit any acts which would result in the loss of the support and protection of their ally, the union. Such a reluctance, involving psychological as well as practical considerations, would exist whether the union was

strong or not. Finally, expulsion from a union may result in the loss of economic advantages such as the availability of loans, insurance, death benefits and pension plans. Many union pension plans provide for a forfeiture of all invested funds, including those funds provided by the employee exclusively, upon expulsion. In such instances the fear of expulsion will surely, without more, enforce obedience to the institutional will,—the more so as the employee's investment and his seniority increases.

In light of these various considerations, it would appear that the threat of expulsion itself is a sufficiently compelling coercion upon employees to satisfy unions' requirement for an effective disciplinary device to force adherence to their objectives.²⁵

If the right to fine union members is added to the right to expel them from membership, the accumulated disciplinary power thus conferred upon unions cannot require augmenting at the cost of a further diminution in employees' Section 7 rights. Rather, for unions to possess and with statutory impunity apply such coercive disciplinary power in order to compel obedience not otherwise freely given may be contrary to the unions' long range interests as it is contrary to the spirit of the Act:

"Balancing the interests involved, it is likely that whereas genuine pro-strike morale among the bulk of the membership is a factor crucial to the union's ability to call a successful strike, the union has not, argued and shown a serious need to substitute for

25. There may well be certain situations, perhaps involving "weak" unions, in which the threat of expulsion will not effectively compel the obedience of the membership. That such situations may exist suggests only that the discipline of expulsion is not absolutely effective, not that it fails to be a reasonable compromise between unions' interests and Section 7 guarantees. Neither the statute itself nor its legislative history requires the conclusion that unions' exemption from the strictures of 8(b)(1)(A) extends to whatever disciplinary coercion is necessary to enforce obedience in even the weakest union.

that morale the power to coerce recalcitrants; absent clear need the NLRA's bias against coercion and in favor of persuasion as the technique of union cohesion seems dispositive. Against the union's interest in an artificial solidarity must be weighed the member's Section 7 interest in freedom from restraint. . . .²⁶

D.

Reliance by the Court Below on the Doctrines of Waiver and Estoppel Was Incorrect.

In approving the union's fines of non-members, the court below reasoned that the employees involved "waived" their right not to strike (i.e., their rights under Section 7), by having voted to strike at the outset, and were "estopped" from discontinuing their strike after it began because other employee-members "relied" on that strike vote in determining to participate in the strike themselves. Such doctrines are inappropriately invoked here.

Basic to the court's decision was the premise that employees should be bound to the consequences of acts and associations voluntarily undertaken. At the outset, the decision to join a union is not voluntary in any traditional sense. As indicated before, an employee must join in order to have any voice in the economic goals which the union seeks in bargaining, including the establishment of a hierarchy of priorities; in the decision as to which cases should be arbitrated and which issues should be pursued in the establishment of work rules negotiated by the parties; in the determination as to the amount of dues to be paid to the union; and in deciding whether the union should strike and whether and when a strike should be terminated by the union. Where a union security clause has been negotiated between the union and the employer, the employee is not informed that he may satisfy the contractual commitment

26. Comment, 80 Harv. L. Rev. 683, 687 (1967).

merely by tendering dues and initiation fees and most collective bargaining agreements containing such clauses refer only to the employee's duty to become a *member* of the union within a fixed number of days.²⁷ Upon joining the union, an employee becomes subject to constitutions and by-laws which he will surely not have seen, much less read, whose terms will be wholly unfamiliar, and without any right or power to amend any of them or seek union membership conditioned in any way on the omission or modification of any terms or duties required or specified therein.²⁸

To speak of voluntary union membership or a voluntary adoption of union's laws or rules has as little relevance to the real world as do the assumptions of the court below

27. For example, the union security clause involved in *Motor Coach Employees v. Lockridge*, 403 U. S. 274 (1971), read as follows:

"All present employees covered by this contract shall become *members* of the [Union] not later than 30 days following its effective date and shall remain *members* as a condition precedent to continued employment. This section shall apply to newly hired employees 30 days from the date of their employment with the Company."

28. The distinction between the limitation on employers' right to withdraw from multi-employer bargaining units and the right employees should enjoy to withdraw from a union at any time traces in part to the fact that an employer's act of joining such an association is in fact voluntary; he knows the conditions and consequences of membership before he joins and his ability to affect his economic destiny does not necessarily depend on his membership. The employee, on the other hand, is faced with a situation where the law makes a union his *exclusive* bargaining agent so that he must join to have a voice on his own behalf, he will have no legal counsel to advise him on his rights and duties prior to joining. More significantly, employees' statutory right to refrain from union activities constitutes an exception to whatever "contract" between the employee-member and the union which may be held to exist. No such statutory exception exists to employers' consensual entry into employer-association arrangements.

Finally, the rules limiting employers' withdrawal from multi-employer units are designed to promote collective bargaining within mutually agreed upon bargaining units, whereas enforceable unions fines imposed on non-consenting non-members impedes free collective bargaining. (See part B, *supra*.)

as to the significance of employees' strike votes. Such votes need not be by secret ballot and frequently are not. Public votes, sometimes by a show of hands, sometimes by voice only, in the course of an emotionally charged meeting, do not and are not designed to elicit the voters' careful and rational consideration. And depending upon the timing of the vote, it may reflect only an attempt to demonstrate the unions' strength during contract negotiations. To rely on such a vote at some time in the future as binding evidence of an employee's prior unqualified intention to strike indefinitely converts fiction into a rule of law.

In general, a waiver of important statutory rights should not be found unless it is express and supported with knowledge of the anticipated consequences, including a renunciation of those rights. In the context of labor relations, neither an employee's decision to join a union, nor the imputed acceptance of the contents of constitutional or by-law provisions, nor his vote to strike at a specific point in time, reflect the kind of informed, voluntary decision which should, as a matter of sound policy, be construed to constitute an unconditional waiver of any statutory rights or protections.

However, even assuming that a vote to strike might, if informed and deliberate, be held to constitute a waiver of statutory rights, there remains the question as to the extent of that waiver. Logic cannot support the assumption that one who votes to strike intends a commitment for the duration of the strike, irrespective of subsequent developments, hardship, passage of time and the parties' changes in position. Not only does the employee make no such unqualified and open-ended commitment when he casts his strike vote, but no other voter could reasonably assume the existence of any such intention for purposes of his own reliance."

29. A contention that an employee who joins a union waives the right to act other than according to the will of the majority is

To hold, as does the court below, that an employee may waive his statutory rights without knowledge or an intention to do so, and that the waiver endures for an unlimited period on the basis of an asserted reliance by others on the unqualified nature of the strike promise where such a reliance cannot in logic exist,—constitutes a conceptual excess which this Court should reject. Since the conclusion reached by the lower court,—permitting unions to fine non-members,—is bottomed on the alleged existence of such an unqualified waiver and assumed reliance by others, the conclusion should be rejected together with the premises which were designed to support it.

CONCLUSION.

For the reasons stated above, together with those additional arguments and authorities raised by the petitioner, it is urged that the Court reverse the decision below.

Respectfully submitted,

MILTON SMITH,
General Counsel,

O. F. WENZLER,
Labor Relations Counsel,
Chamber of Commerce of the
United States of America,
1615 H. Street, N. W.,
Washington, D. C.,

JERRY KRONENBERG,
BOROVSKY, EHRLICH & KRONENBERG,
120 South LaSalle Street,
Chicago, Illinois 60603,

GERARD C. SMETANA,
925 South Homan Avenue,
Chicago, Illinois 60607,

Attorneys for the Amicus Curiae.

unsound for two reasons: first, the nature of the pressures which lead employees to join unions argues against an express willingness to accede to majority will which might be inferred from a more realistically “voluntary” act; second, such a result is incompatible with the continuing viability of Section 7 as applied to any employees who join labor organizations.

(Slip Opinion)

NOTE: Where it is deemed desirable, a syllabus (translation) will be released, as is being done in connection with this case, of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Brown*, 300 U.S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

NATIONAL LABOR RELATIONS BOARD *v.* GRANITE STATE JOINT BOARD, TEXTILE WORKERS UNION OF AMERICA, LOCAL 1029, AFL-CIO

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

No. 71-711. Argued November 13, 1972—Decided December 7, 1972

Where neither the Union-employer contract nor the Union's constitution or bylaws defined or limited the circumstances under which a member could resign from the Union, it was an unfair labor practice for the Union to fine employees who had been Union members in good standing but who had resigned during a lawful strike authorized by the members and thereafter returned to work during that strike. Pp. 3-5.

446 F. 2d 369, reversed.

DOUGLAS, J., delivered the opinion of the Court, in which BURGER, C. J., and BRENNAN, STEWART, WHITE, MARSHALL, POWELL, and REHNQUIST, JJ., joined. BURGER, C. J., filed a concurring opinion. BLACKMUN, J., filed a dissenting opinion.

THE UNITED STATES OF AMERICA

DEPARTMENT OF THE INTERIOR

AND BUREAU OF LAND MANAGEMENT
WASHINGTON, D. C.
OFFICE OF THE ASSISTANT
SECRETARY

TO THE SECRETARY OF THE INTERIOR
FROM THE ASSISTANT SECRETARY
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DATE: [Illegible]
[The following text is extremely faint and largely illegible due to the quality of the scan. It appears to be a memorandum or report detailing land management issues, possibly related to the Bureau of Land Management's operations in the early 20th century.]

NOTICE: This opinion is subject to formal revision before publication in the preliminary print of the United States Reports. Readers are requested to notify the Reporter of Decisions, Supreme Court of the United States, Washington, D.C. 20543, of any typographical or other formal errors, in order that corrections may be made before the preliminary print goes to press.

SUPREME COURT OF THE UNITED STATES

No. 71-711

National Labor Relations Board,
Petitioner,

v.

Granite State Joint Board, Textile Workers Union of America,
Local 1029, AFL-CIO.

On Writ of Certiorari
to the United States
Court of Appeals
for the First Circuit.

[December 7, 1972]

MR. JUSTICE DOUGLAS delivered the opinion of the Court.

Respondent is a union that had a collective-bargaining agreement with an employer which contained a maintenance-of-membership clause providing that members were, as a condition of employment, to remain in good standing "as to payment of dues" for the duration of the contract. Neither the contract nor the Union's constitution or bylaws contained any provision defining or limiting the circumstances under which a member could resign. A few days before the collective agreement expired, the Union membership voted to strike if no agreement was reached by a given date. No agreement was reached in the specified period so the strike and attendant picketing commenced. Shortly thereafter the Union held a meeting at which the membership resolved that any member aiding or abetting the employer during the strike would be subject to a \$2,000 fine.

About six weeks later, two members sent the Union their letters of resignation. Six months or more later 29 other members resigned. These 31 employees returned to work.

The Union gave them notice that charges had been made against them and that on given dates the Union would hold trials. None of the 31 employees appeared on the dates prescribed; but the trials nonetheless took place even in the absence of the member and fines were imposed on all.¹ Suits were filed by the Union to collect the fines. But the outcome was not determined because the employees filed unfair labor charges with the Board against the Union.

The unfair labor practice charged was that the Union restrained or coerced the employees "in the exercise of the rights guaranteed in section 7."² See § 8 (b)(1) of the Act.³ The Board ruled that the Union had violated § 8 (b)(1). 187 N. L. R. B. —. The Court of Appeals denied enforcement of the Board's order. 446 F. 2d 369. The case is here on a petition for a writ of certiorari, 407 U. S. —.

We held in *National Labor Relations Board v. Allis-Chalmers Mfg. Co.*, 388 U. S. 175, that a union did not violate § 8 (b)(1) by fining members who went to work during a lawful strike authorized by the membership and

¹ Fines equivalent to a day's wages for each day worked during the strike were imposed.

² Section 7 provides in relevant part:

"Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities" 187 N. L. R. B., at —.

³ "Sec. 8 (b). It shall be an unfair labor practice for a labor organization or its agents—

"(1) to restrain or coerce (A) employees in the exercise of the rights guaranteed in section 7: *Provided*, That this paragraph shall not impair the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership therein . . ."

by suing to collect the fines. The Court reviewed at length in that opinion the legislative history of § 7 and of § 8 (b)(1), and concluded by a close majority vote that the disciplinary measures taken by the union against its members on these facts were within the ambit of the union's control over its internal affairs. But the sanctions allowed were against those who "enjoyed full union membership." *Id.*, at 196.

Yet when a member lawfully resigns from the union, its power over him ends. We noted in *Scofield v. Labor Board*, 394 U. S. 423, 429, that if a union rule "invades or frustrates an overriding policy of the labor laws the rule (of *Allis-Chalmers*) may not be enforced, even by fine or expulsion, without violating § 8 (b)(1)." On the facts we held that *Scofield*, where fines were imposed on members by the union, fell within the ambit of *Allis-Chalmers*. But we drew the line between permissible and impermissible union action against members as follows:

"... § 8 (b)(1) leaves a union free to enforce a properly adopted rule which reflects a legitimate union interest, impairs no policy Congress has imbedded in the labor laws, and is reasonably enforced against union members who are free to leave the union and escape the rule." *Id.*, at 430.

Under § 7 of the Act the employees have "the right to refrain from any or all" concerted activities relating to collective bargaining or mutual aid and protection, as well as the right to join a union and participate in those concerted activities. We have here no problem of construing a union's constitution or bylaws defining or limiting the circumstances under which a member may resign from the union.⁴ We have, therefore, only to apply the

⁴ Union-security arrangements requiring employees to pay dues, though not requiring membership, has been held not to be an unfair

law which normally is reflected in our free institutions—the right of the individual to join or to resign from associations, as he sees fit “subject of course to any financial obligations due and owing” the group with which he was associated. *Communications Workers v. Labor Board*, 215 F. 2d 835, 838.

The *Scofield* case indicates that the power of the union over the member is certainly no greater than the union-member contract. Where a member lawfully resigns from a union and thereafter engages in conduct which the union rule proscribes, the union commits an unfair labor practice when it seeks enforcement of fines for that conduct. That is to say, when there is a lawful dissolution of a union-member relation, the union has no more control over the former member than it has over the man in the street.

The Court of Appeals gave weight to the fact that the resigning employees had participated in the vote to strike. We give that factor little weight. The first two members resigned from the Union from one to two months after the strike had begun. The others did so from seven to 12 months after its commencement. And the strike was still in progress 18 months after its inception. Events occurring after the calling of a strike may have unsettling effects, leading a member who voted to strike to change his mind. The likely duration of the strike may increase the specter of hardship to his family; the ease with which the employer replaces the strikers may make the strike seem less provident. We do not now decide to what extent the contractual relationship between union and member may curtail the freedom to resign. But where, as here, there are no restraints on the resignation of

labor practice and therefore not an excuse for the employer to refuse to bargain collectively for such an agreement, at least where state law allows employees that option. *Labor Board v. General Motors Corp.*, 373 U. S. 734.

members,⁸ we conclude that the vitality of § 7 requires that the member be free to refrain in November from the actions he endorsed in May and that his § 7 rights are not lost by a union's plea for solidarity or by its pressures for conformity and submission to its regime.

Reversed.

⁸ The union argues that its practice was to accept resignations of members only during an annual ten-day "escape period," during which time the employees were allowed to revoke their "dues checkoff" authorizations. The Court of Appeals rejected that argument, saying there was no evidence that the employees knew of this practice or that they had consented to its limitation on their right to resign. 446 F. 2d 369, 372.

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[December 7, 1972]

MR. CHIEF JUSTICE BURGER, concurring.

I join the Court's opinion because for me the institutional needs of the Union, important though they are, do not outweigh the rights and needs of the individual. The balance is close and difficult; unions have need for solidarity and at no time is that need more pressing than under the stress of economic conflict. Yet we have given special protection to the associational rights of individuals in a variety of contexts; through § 7 of the Labor Act, Congress has manifested its concern with those rights in the specific context of our national scheme of collective bargaining. Where the individual employee has freely chosen to exercise his legal right to abandon the privileges of union membership, it is not for us to impose the obligations of continued membership.

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[December 7, 1972]

MR. JUSTICE BLACKMUN, dissenting.

On September 14, 1968, just six days prior to the expiration of the collective-bargaining agreement then in force, the Union membership voted to strike. The strike began September 20. On September 21 the membership unanimously¹ adopted a resolution that anyone aiding or abetting the company during the strike would be subject to a fine not exceeding \$2,000. Each of the employees involved here voted for both of these resolutions and participated in the strike.² Each was a member of the Union during the period in which the votes were taken and the strike began. Membership was voluntary,

¹ There is a mild discrepancy in the record as to whether the vote, on the strikebreaking resolution was unanimous. In his first opinion, the trial examiner indicated that the vote was unanimous. (J. S. 23a.) In a second opinion the examiner indicated that there was one dissenting vote.

² The parties stipulated before the trial examiner that all 31 employees participated in the strike vote, and voted in favor of the strike. A. 45. It is less clear whether each of the employees voted in favor of the fine. These are matters that would be resolved in the state court proceedings.

and persons who became members were free to resign at any time.³

In *NLRB v. Allis-Chalmers Mfg. Co.*, 388 U. S. 175 (1967), this Court held that a union could enforce in a state court a fine levied against a strikebreaking member. The Court noted that, at the time § 8 (b)(1)(A) was enacted, "provisions defining punishable conduct and the procedures for trial and appeal constituted part of the contract between member and union and that 'The courts' role is but to enforce the contract.'" 388 U. S., at 182. The scope of § 8 (b)(1)(A) was confined to restraint or coercion visited upon union members in the course of organizational campaigns, *id.*, at 186-188, or by arbitrary and undemocratic union leadership, *id.*, at 188-189, or by coercion that prevented employees not in the bargaining unit from going to work, *id.*, at 189 & n. 25. That section was not viewed as prohibiting "the imposition of fines on members who decline to honor an authorized strike and attempts to collect such fines." *Id.*, at 195. Finding, as a consequence, no restraint or coercion by the union on the employees' § 7 rights, the Court sustained the union's power to enforce the strikebreaking fines in state court.

³ The union and the company had no union shop clause in the 1965 collective-bargaining agreement. The union constitution and by-laws contained no express provision limiting members' rights to resign. In the absence of such a provision, the members could submit voluntary resignations at any time. *NLRB v. Mechanical and Allied Production Workers, Local 444*, 427 F. 2d 883 (CA1 1970); *Communication Workers v. NLRB*, 215 F. 2d 838, 82 -839 (CA2 1954). And as the collective-bargaining agreement was no longer in force at the time of the resignations, the retention of membership provision was no longer in effect. Finally, the trial examiner found no evidence that the members knew of the union's "established practice" of accepting resignations only during the annual 10-day escape period, and in the absence of such knowledge that practice cannot be enforced.

Today the Court reaches an opposite result on the basis of two facts: "Neither the contract nor the Union's constitution or bylaws contained any provision defining or limiting the circumstances under which a member could resign"; and the strikebreaking employees resigned before returning to work, thus effecting "a lawful dissolution of [the] union-member relation." As to the first fact, I am not convinced that the presence of a provision in the union constitution, for example, should always make a difference with respect to the existence of an enforceable, voluntary obligation on the part of an employee to refrain from strikebreaking activity. In fact, it seems likely that the three factors of a member's strike vote, his ratification of strikebreaking penalties, and his actual participation in the strike, would be far more reliable indicia of his obligation to the union and its members than the presence of boilerplate provisions in a union's constitution. As to the second fact, while membership in the union may well have implications with respect to the union's power over the resigned member, I am hard put to understand why this fact, alone, results in restraint or coercion under § 8 (b) (1) (A), when the imposition of fines for similar conduct by members, and their enforcement in state courts, does not fall within that section's prohibition. *NLRB v. Allis-Chalmers Mfg. Co.*, *supra*. Are an employee's § 7 rights any more at stake here than they are where, as in *Allis-Chalmers*, the employee engages in the same activity but stops short of resigning from the union?

I cannot join the Court's opinion, which seems to me to exalt the formality of resignation over the substance of the various interests and national labor policies that are at stake here. Union activity, by its very nature, is group activity, and is grounded on the notion that strength can be garnered from unity, solidarity, and mutual commitment. This concept is of particular force

during a strike, where the individual members of the union draw strength from the commitments of fellow members, and where the activities carried on by the union rest fundamentally on the mutual reliance that inheres in the "pact." Similar mutual commitments arising from perhaps less compelling circumstances have been held to be legally enforceable. See 1A A. Corbin, Contracts § 198, at 210-212 (1963).

A union's power to enforce these mutual commitments on behalf of its members is of particular importance during the course of a strike. "The economic strike against the employer is the ultimate weapon in labor's arsenal for achieving agreement upon its terms, and '[t]he power to fine or expel strikebreakers is essential if the union is to be an effective bargaining agent . . .'" 388 U. S., at 181. The 31 employees involved in this case, joined with their then-fellow members, voted to strike as well as to impose sanctions on those who broke ranks,⁴ and participated in the strike. Their votes were voluntary and uncoerced. They had notice of the fines, and raised no objections, perhaps feeling that the hardships that would befall them during the strike would be compensated by ultimate victory at the bargaining table. They did not attempt to bring the matter to the vote of the membership, a majority of which could have, and later did,⁵ terminate the strike.

I am not convinced that in the strike context, where paramount union and employee interests are at stake, union enforcement of this mutual obligation by reasonable fines "invades or frustrates an overriding policy of the labor laws." *Scofield v. NLRB*, 394 U. S. 423, 429

⁴The reasonableness of the fines imposed by the union is not in issue here.

⁵Counsel for respondent stated in oral argument that the union membership ultimately voted to terminate the strike and accept the company's offer. Tr. of Oral Arg. 29.

(1969).^{*} The Court of Appeals concluded that § 7 of the Act, granting employees the right "to refrain from any or all" collective activities, including membership and participation in strikes, was not involved in this case. Emphasizing the meaning of the word "refrain," the court concluded that "although § 7 gives an employee the right to refuse to undertake and involve himself in union activities, it does not necessarily give him the right to abandon these activities in midcourse once he has undertaken them voluntarily." 446 F. 2d 389, 373. See H. R. Rep. No. 510, 80th Cong., 1st Sess., 39-40 (1947). I believe this notion expressed by the Court of Appeals is applicable in the limited context of the economic strike. In my view, the policy of § 7 would not be frustrated by a holding that an employee could, in the circumstances of this case, knowingly waive his § 7 right to resign from the union and to return to work without sanction.[†] The mutual reliance of his fellow members who abide by the strike for which they have all voted outweighs, in the circumstances here presented, the admitted interests of the individual who resigns to return to work. He may still resign, and he may also return to work, but not without the prospect of having to pay a reasonable union fine for which he voted.

^{*} The decision in *Scofield* indicated, in dictum, that an employee could avoid a union productivity rule by resigning from membership. 394 U. S., at 430. That statement should not be construed to mean that employees can never bind themselves to fulfill union obligations where, as here, the enforcement of that obligation is essential to maintain union discipline during a strike. See Note, 85 Harv L. Rev. 1669, 1674-1675 n. 23 (1972); Note, 40 Geo. Wash. L. Rev. 330, 338-339 (1971).

[†] In other contexts it has been held that § 7 rights may be waived. E. g., *NLRB v. Shop Rite Foods, Inc.*, 430 F. 2d 786 (CA5 1970). Indeed, this Courts' opinions in *Allis-Chalmers* and *Scofield* implicitly recognise that § 7 rights can be waived. 388 U. S., at 200 (Black, J., dissenting).

The employees who resigned have not asserted any changed circumstances or undue hardships that would justify their resignations and return to work. Nor do they claim that the fines imposed on them were unreasonable.* Perhaps these matters could be asserted before the Board or in defense in the state court proceedings under prevailing state law. As these issues have not been argued in this case, they need not be resolved at this time.

I would affirm the decision below.

* The General Counsel argued before the trial examiner that the fines imposed were unreasonable, and that the imposition of an unreasonable fine would constitute a violation of § 8 (b) (1) (A). The trial examiner did not pass on this issue, as he concluded that the imposition of any fine on employees who resigned from membership in the union and returned to work violated § 8 (b) (1) (A). Neither the Board nor the Court of Appeals passed on this issue, and it has not been argued before this Court.